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Synopsis of State Case and Statutory Law

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Synopsis of State Case and Statutory Law

The *Journal's* Editorial Staff

ALABAMA

Case Law and Statutes

No court cases or statutes strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

ALASKA

Case Law

State v. Grubbs, No. 4FA S89-415 (Alaska Super. Ct. Oct. 2, 1989): The court sentenced a twenty-three year old woman, who allegedly used cocaine during pregnancy, to six months in prison and five years probation for criminally negligent homicide in the death of her two week-old son. An autopsy revealed that her infant son died of a heart attack caused by prenatal cocaine use.

Statutes

Education

ALASKA STAT. § 18.05.037 (Michie 2001): The Department of Health and Social Services shall prepare or obtain distributable information on fetal alcohol effects and the fetal health effects of chemical abuse and battering during pregnancy. The department shall make this information available to public hospitals, clinics, and other health facilities in the state for distribution to their patients.

ALASKA STAT. § 25.05.111(b) (Michie 2001): When a marriage license is issued, the licensing officer shall also give to the parties written information about fetal alcohol effects and the fetal health effects of chemical abuse and battering during pregnancy. The Department of Health and Social Services shall prepare or obtain this information and submit it in distributable form to each licensing officer in the state.

ARIZONA

Case Law

State v. Reineiro, 894 P.2d 733 (Ariz. Ct. App. 1995): A lower Arizona court criminally indicted a woman for child abuse when her child was born addicted to heroin. The court of appeals dismissed these charges, holding that the use of drugs during pregnancy does not constitute child abuse under ARIZ. REV. STAT. § 13-3623, which defines child abuse as applying to "any person who causes a child. . .to suffer physical injury or. . .who causes or permits the person or health of the child. . .to be injured or who causes or permits a child. . .to be placed in a situation where the person or health of the child...is endangered." The holding was based on the conclusion that child abuse under this statute does not apply to fetuses because the legislature had not included any reference to fetuses or unborn children, whereas it had clearly included them in other statutes.

Appeal in Pima County Juvenile Severance Action, 905 P.2d 555 (Ariz. Ct. App. 1995): The court of appeals ruled that a mother's ingestion of alcohol during pregnancy did not constitute adequate grounds for a finding of child abuse under Arizona's severance statute, ARIZ. REV. STAT. § 8-533(B) (2). Severance of parental rights under this statute is allowed on grounds "that the parent has neglected or willfully abused a child." The court concluded that the definition of "child" under the severance statute as "a person less than eighteen years of age" did not include a fetus, and thus that injury to a fetus did not constitute child abuse for the purposes of severing parental rights.

Statutes

Education

ARIZ. ADMIN. CODE 9-20-18, Exhibit A (2000): People undergoing methadone treatment must receive a consent form that contains a section entitled "Female Patients of Child-Bearing Age," which warns that "methadone is transmitted to the unborn child and will cause physical dependence."

ARIZ. REV. STAT. § 15-712(A) (2000): Instruction on the nature and harmful effects of alcohol, tobacco, narcotic drugs, marijuana, and other dangerous drugs on a human fetus may be included in the courses of study in grades six through twelve.

Reporting

ARIZ. REV. STAT. § 13-3620(B) (2000): A health care professional who is [subject to the statute] and whose routine newborn physical assessment of a newborn infant's health status or whose notification of positive toxicology screens of a newborn infant gives the professional reasonable grounds to believe that the newborn infant may be affected by the presence of alcohol or a substance shall immediately report this information, or cause a report to be made, to child protective services. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.

Treatment

ARIZ. REV. STAT. § 8-812(A), (C) (2000): A Child Protective Services expedited substance abuse treatment fund was established to provide expedited substance abuse treatment to parents or guardians with a primary goal of facilitating family preservation or reunification, including, if necessary, services that maintain the family unit in a substance abuse treatment setting.

ARIZ. REV. STAT. § 36-141(B) (2000): In allocating any new and existing undedicated monies available to the Division of Behavioral Health for alcohol and substance abuse, the deputy director shall give priority to treatment services for pregnant abusers of alcohol and other drugs.

ARKANSAS

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Third-Party Liability

ARK. CODE ANN. § 16-124-104 (Michie 2001): An individual who was exposed to an illegal drug in utero can bring an action in circuit court for damages against a person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug against the individual.

Treatment

ARK. CODE ANN § 20-85-101 (Michie 2001): The Family Treatment and Rehabilitation Program for Addicted Women and Their Children is designed to (1) develop a statewide program of treatment, rehabilitation, prevention, intervention, and relevant research for families affected by maternal addiction by coordinating existing health services, human services, and education and employment resources; (2) develop resources for local treatment and rehabilitation programs for families affected by maternal addiction by providing policy research, technical assistance, and evaluation of program outcomes; (3) identify gaps in service delivery to families affected by maternal addiction and propose solutions; (4) enter in contracts for the delivery of services under the program; (5) solicit, accept, retain and administer gifts, grants or donations of money, services or property for the administration of the program; and (6) provide centralized billing for providers who agree to provide a comprehensive array of specialized coordinated services under or through the program.

CALIFORNIA

Case Law

In re Troy D, 263 Cal. Rptr. 869 (Cal. Ct. App. 1989): Appellant mother's infant son was born prematurely and tested positive for amphetamines and opiates. A dependency petition was filed alleging that he came within the provisions of California's child dependency statute. The trial court declared the child a dependent and ordered him detained with his grandmother. The court of appeals affirmed, noting that the child's detrimental condition was caused by appellant's unreasonable acts of ingesting dangerous drugs while pregnant with him, thereby creating a legal presumption that he was a person described by the statute.

Reyes v. Superior Court of San Bernardino County, 141 Cal. Rptr. 912 (Cal. Ct. App. 1977): Petitioner mother used heroin during the last two months of her pregnancy, and her twin sons were born addicted to heroin. The state charged her with two counts of felony child endangering, but the court of appeals set the charges aside, finding that California's child endangerment statute was not intended to refer to an unborn child, and therefore Reyes' prenatal conduct did not constitute felonious child endangering within contemplation of the statute.

People v. Jones, No. 93-5, Transcript of Record (Cal. J. Ct. July 28, 1993): The Siskiyou County court held that the legislative history of the murder statute did not support its application in a case where a woman's newborn allegedly died because of her prenatal drug use.

Jaurigue v. People, No. 18988, slip op. (Cal. Super. Ct. Aug. 21, 1992): The court dismissed fetal homicide charges against a woman who delivered her child stillbirth, allegedly as a result of her prenatal drug use. The court found that neither legislative history nor the statute's language suggested that a woman could be prosecuted for murder for the death of her fetus.

Statutes*Criminal Statutes*

CAL. PENAL CODE § 1170.82 (Deering 2001): The unlawful selling, furnishing, administering, or giving away of controlled substances to pregnant women, among others, shall be a "circumstance in aggravation of the crime" in imposing a term.

Education

CAL. BUS. & PROF. CODE § 2191(f) (Deering 2001): In determining its continuing education requirements, the Division of Licensing for Medical Professionals shall consider including a course in the special care needs of drug-addicted infants to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with these infants.

CAL. EDUC. CODE § 51203 (Deering 2001): Instruction on the effects of alcohol, narcotics, and other dangerous substances upon prenatal development shall be included in the curriculum of all secondary schools.

CAL. EDUC. CODE § 52853 (Deering 2001): California's Education Code

provides for staff development programs on how to successfully work with pupils who have been prenatally substance exposed.

CAL. HEALTH & SAFETY CODE § 11868.5 (Deering 2001): The State Department of Alcohol and Drug Programs shall distribute a brochure to hospitals, public health nurses, child protective services, and alcohol and drug facilities, on the care and treatment of infants under the age of six months who have been exposed to drugs. The brochure shall include, but not be limited to, the following: signs and symptoms of an infant who has been exposed to drugs; the health problems of infants who have been exposed to drugs; and the special feeding and care needs of infants who have been exposed to drugs.

CAL. HEALTH & SAFETY CODE § 130125 (Deering 2001): The California Children and Families Program's guidelines shall address, among other things, avoidance of tobacco, drugs, and alcohol during pregnancy.

Evaluation of Programs

CAL. HEALTH & SAFETY CODE § 124195 (Deering 2001): The Department of Health must submit a report to the state legislature detailing, among other things, the incidence of high-risk pregnant or parenting adolescents who are abusing alcohol and/or drugs; an assessment of the effectiveness of counseling services in reducing the incidence of high-risk pregnant and parenting adolescents who are abusing alcohol and/or drugs; the effectiveness of the component of other health programs aimed at reducing substance use among pregnant and parenting adolescents; and the need for an availability of substance abuse treatment programs that are appropriate, acceptable, and accessible to teenagers.

Funding

CAL. HEALTH & SAFETY CODE § 11757.59 (Deering 2001): Funds distributed for the expansion of the pilot project, Services for Alcohol and Drug Abusing Pregnant and Parenting Women and Their Infants, shall be used by counties to fund residential and nonresidential alcohol and drug treatment programs for pregnant women, postpartum women, and their children, and to fund other support services directed at bringing pregnant and postpartum women into treatment and caring for alcohol- and drug-exposed infants.

CAL. HEALTH & SAFETY CODE § 130105 (Deering 2001): Six percent of the California Children and Families Trust Fund will be deposited in a Mass Media Communications Account for public communications on subjects including the prevention of tobacco, alcohol, and drug use by pregnant women.

Identification, Testing, and Reporting

CAL. HEALTH & SAFETY CODE § 123600 (Deering 2001): The Health and Welfare Agency shall develop and disseminate a model needs assessment protocol for pregnant and postpartum substance abusing women in conjunction with the appropriate professional organizations in the areas of hospital administration, substance abuse prevention and treatment, social services, public health, and appropriate state agencies.

CAL. PENAL CODE § 11165.13 (Deering 2001): A positive toxicology screen at

the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child. If other factors indicate risk to a child, then a report shall be made. However, a report based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

CAL. WELF. & INST. CODE § 14148.91(b) (Deering 2001): The State Department of Health Services must report to the legislature and the governor by March 15 of every year the number of newborn babies with fetal alcohol syndrome, the number of babies born with drug dependencies, and whether the mother smoked, consumed alcoholic beverages, or used controlled substances without a prescription, during pregnancy.

Legislative Findings

CAL. HEALTH & SAFETY CODE § 11781 (Deering 2001): Alcohol and drug treatment is not being accessed by women in proportion to the problems they experience. This can be attributed to, among other things, lack of educational materials appropriate to the community, geographical remoteness, language differences, and lack of representation.

CAL. WELF. & INST. CODE § 14148.9 (Deering 2001): There is a strong statistical relationship between early entry into prenatal care and healthy birth outcomes. One goal of the program established pursuant to this article is to combine efforts with other programs to measurably reduce the number of women who smoke, use drugs, or engage in other unhealthy practices during pregnancy.

Pilot Programs and Task Forces

CAL. HEALTH & SAFETY CODE § 11757.53 (Deering 2001): The Office of Perinatal Substance Abuse is established to coordinate pilot projects related to perinatal substance abuse; provide technical assistance to entities attempting to address the problem; serve as a clearinghouse of information regarding strategies and programs that address perinatal substance abuse; and review proposals of, and develop proposals for, state agencies regarding the funding of programs relating to perinatal substance abuse.

CAL. HEALTH & SAFETY CODE § 11757.55(c) (Deering 2001): An interagency task force shall develop a coordinated state strategy for addressing the treatment needs of pregnant women, postpartum women, and their children for alcohol or drug abuse.

Third-Party Liability

CAL. HEALTH & SAFETY CODE § 11705 (Deering 2001): An individual who was exposed to an illegal controlled substance in utero may bring an action for damages caused by an individual's use of an illegal controlled substance against a person who sold, administered, or furnished an illegal controlled substance to the individual user of the illegal controlled substance.

Treatment

CAL. CODE REGS. tit. 9, § 10360 (2001): The Department of Alcohol and Drug Programs has promulgated special regulations for drug treatment counselors who discover that a patient is pregnant.

CAL. CODE REGS. tit. 15, § 3074.3 (2001): The Department of Corrections has created a special program called the Family Foundations Program, which is a twelve-month residential substance abuse treatment program for pregnant and/or parenting female inmates who have been determined by the court to benefit from participation, recommended by the court for placement, and are accepted by the Department to participate. Female inmates in the program will be placed in a Family Foundations facility in the community as an alternative to serving their prison term in a state prison institution.

CAL. HEALTH & SAFETY CODE § 104564 (Deering 2001): California requires all counties participating in the "Comprehensive Perinatal Outreach Program" to maintain providing early outreach, pregnancy screening, patient advocacy, targeted case management, health education, and referral to drug and alcohol treatment and perinatal care services to pregnant women.

CAL. HEALTH & SAFETY CODE § 104568 (Deering 2001): For purposes of this chapter, "outreach" includes, but is not limited to, coordinated local systems of care-providing pregnancy testing, screening for risk factors, care coordination, referral to appropriate services, including, but not limited to, alcohol and drug treatment, transportation, child care, patient incentives, and assurance of continuous prenatal care including recruitment and retention of physicians.

CAL. HEALTH & SAFETY CODE § 11757.61 (Deering 2001): Counties that receive funding under the Act are required to establish "perinatal coordinating councils" that are to evaluate the extent of the perinatal alcohol and drug abuse problem in the county, coordinate countywide efforts to provide services to affected women and infants, and promote community understanding of the issues surrounding perinatal alcohol and drug abuse.

CAL. HEALTH AND SAFETY CODE § 11998.1 (Deering 2001): Every county drug and alcohol abuse treatment or recovery program that serves women gives priority for services to pregnant women.

CAL. HEALTH & SAFETY CODE § 124190 (Deering 2001): A comprehensive coordinated substance abuse prevention, intervention, and counseling program, shall include programs that have demonstrated a capacity for developing interagency cooperative approaches to reduce the incidence of high-risk pregnant or parenting adolescents. The programs must maximally utilize existing available programs and facilities; have developed goals and objectives for reducing the incidence of high-risk pregnant and parenting adolescents; be culturally and linguistically appropriate to the population being served; and include staff development training by substance abuse counselors.

CAL. PENAL CODE § 1174.4 (Deering 2001): Pregnant women with an established history of substance abuse, or pregnant or parenting women with an established history of substance abuse who have one or more children under six

years old, may participate in an alternative sentencing program.

CAL. WELF. & INST. CODE § 14132.36 (Deering 2001): To the extent that federal financial participation becomes available, residential care for alcohol and drug-exposed pregnant women and women in the postpartum perinatal period is a covered service.

CAL. WELF. & INST. CODE § 14132.90 (Deering 2001): Outpatient drug-free services and day care habilitative services are benefits for alcohol and drug-exposed pregnant women under the Medi-Cal Benefits Program.

COLORADO

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

COLO. REV. STAT. § 25-31-104 (2000): A nurse home visitor program is established to help educate mothers on the importance of nutrition and avoiding alcohol and drugs, including nicotine.

Funding

COLO. REV. STAT. § 19-3.5-105(1)(f) (2000): Colorado's Children's Trust Fund Board shall expend moneys of the trust fund for the establishment, promotion, and maintenance of prevention programs, including pilot programs, to prevent and reduce the occurrence of prenatal drug exposure.

COLO. REV. STAT. § 25-1-203(2)(g) (2000): The Health Division may make grants to approve public programs that provide education and counseling regarding the use and abuse of alcohol and drugs; programs for prevention of alcohol and drug abuse; and training of teachers, health professionals, and others in the field of alcohol and drug abuse.

Identification

COLO. REV. STAT. § 26-4-508.2 (2000): Health care practitioners are encouraged to identify pregnant women at risk of a poor birth outcome due to substance abuse during the prenatal period and in need of special assistance to reduce such risk. Any health care practitioner who makes such a determination is encouraged to refer such woman to any entity approved and certified by the Department of Health for the performance of a needs assessment.

Legislative Findings

COLO. REV. STAT. § 25-1-212 (2000): Colorado is at risk of having poor birth outcomes due to substance abuse during the prenatal period, and early identification of such high-risk pregnant women and substance abuse treatment will greatly reduce the occurrence of poor birth outcomes. In recognition of such

problems, a treatment program for high-risk pregnant women is created.

Treatment

COLO. REV. STAT. § 25-1-213 (2000): Any entity that qualifies to provide services to the treatment program for high-risk pregnant women, shall make available, in addition to alcohol and drug counseling and treatment: Risk assessment services; care coordination; nutrition assessment; psychosocial counseling; intensive health education, including but not limited to parenting education and education on risk factors and appropriate health behaviors; home visits; transportation services; and other services deemed necessary by the Division of Alcohol and Drug Abuse of the Department of Human Services, the Department of Public Health and Environment, and the Department of Health Care Policy and Financing.

COLO. REV. STAT. § 26-4-302 (2000): The Colorado Medical Assistance Act provides drug and alcohol treatment, including outpatient and residential care, excluding room and board, to pregnant women identified, or women who would be eligible for aid to families with dependent children.

CONNECTICUT

Case Law:

In re Valerie, 613 A.2d 748 (Conn. 1992): The supreme court ruled that a mother's parental rights of her infant could not be terminated under CONN. GEN. STAT. § 45a-717(f)(2) for her prenatal cocaine use. The court found that the mother could not be a "parent" under the statute until the child is born, and that the infant was not a "child" under the statute until the moment of birth. Therefore, prenatal drug use could not meet the statutory definitions for parental conduct that denied care necessary for physical well-being.

Statutes

Education

CONN. AGENCIES REGS. § 19a-59c-4(k)(3)(E) (2000): All local Women, Infants, and Children (WIC) agencies are to provide information to pregnant participants on the dangers of drug, alcohol, and tobacco use during pregnancy. Local WIC agencies are to make appropriate referrals.

Task Force

CONN. GEN. STAT. § 17a-711 (2001): The Department of Mental Health and Addiction Services shall establish a committee on substance-abusing pregnant women and their children, which will make recommendations to the Department in the development and oversight of treatment programs.

Treatment

CONN. GEN. STAT. § 17a-710 (2001): The State Department of Mental Health and Addiction Services is required to develop comprehensive programs to provide outreach, treatment, education, medical care, vocational services, and housing to

pregnant women who use drugs and their children, to the extent that private and public funds are available. The Department must include in the state substance abuse plan goals to overcome treatment barriers that are specific to pregnant women and women with children, and to provide increased treatment services and programs to pregnant women. The Department is required to submit an annual report to a legislative committee on the development of programs and statistical and demographic information about women seeking treatment availability.

CONN. GEN. STAT. § 19a-7e (2001): The Department of Public Health and the Office of Health Care Access, in consultation with the Department of Social Services, shall establish a three-year demonstration program to improve access to health care for uninsured pregnant women under 250% of the poverty level. Services to be covered by the program include substance abuse counseling and other ancillary services, which may include substance abuse treatment and mental health services, as required by the patient's condition, history, or circumstances.

DELAWARE

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

DEL. CODE ANN. tit. 16, § 190 (2000); DEL. CODE ANN. tit. 24, § 1770(a) (2000): Professionals who treat, advise, or counsel pregnant women must post and give written and verbal warnings about the possible problems, complications, and injuries to women and/or a fetus resulting from women's consumption or use of alcohol, cocaine, marijuana, heroin, or other narcotics during pregnancy.

DISTRICT OF COLUMBIA

Case Law

United States v. Vaughn, No. F-2172-88B (D.C. Super. Ct. Aug. 23, 1988): The court ordered a drug test on a pregnant woman who was arrested and charged with second-degree theft. After testing positive for cocaine, the woman was sentenced to "a long enough term in jail to be sure that she would not be released until her pregnancy was concluded."

Statutes

Education

D.C. CODE ANN. § 25-147 (2000): Any person who owns or operates a business establishment that sells alcoholic beverages for consumption, either on or off the premises, must post a sign in a conspicuous place that reads: "Warning: Drinking

alcoholic beverages during pregnancy can cause birth defects.”

Treatment

D.C. CODE ANN. § 32-1602 (2000): All D.C. residents are eligible for substance abuse treatment, regardless of ability to pay, but any minor, pregnant woman, or the parent, guardian, or other person who has legal custody of a minor has priority for admission to the treatment facility over any single adult who does not have a minor child.

FLORIDA

Case Law

State v. Johnson, 602 So. 2d 1288 (Fla. 1992): During her two pregnancies, petitioner used drugs within twenty-four hours of giving birth. She was convicted of delivering a controlled substance to an infant. The appeals court affirmed the convictions, and certified a question to the supreme court as to whether the statute permitted prosecution of a mother who ingested a controlled substance prior to giving birth, and delivered the controlled substance to the infant during the time following the birth, but before the umbilical cord was severed. The supreme court held that petitioner could not be prosecuted because the legislative history indicated that the legislature had rejected a provision that authorized criminal penalties against mothers who delivered drug-affected babies. Such prosecutions violated public policy because they could discourage women from seeking prenatal care.

State v. Carter, 602 So. 2d 995 (Fla. Dist. Ct. App 1992): The appeals court affirmed the lower court's decision to dismiss child abuse charges against a woman who allegedly used illegal drugs while pregnant.

State v. Gethers, 585 So. 2d 1140 (Fla. Dist. Ct. App. 1991): Appellee was charged with child abuse for allegedly injuring her unborn child as a result of her use of cocaine during pregnancy. The trial court dismissed on the grounds that the statute did not criminalize the alleged conduct. On appeal, the state contended that the child abuse statute was amended to include injuries to an unborn child that are sustained during gestation. The court of appeals rejected the state's position and affirmed the dismissal of charges, finding that the legislature specifically rejected criminal prosecution of mothers who gave birth to drug dependent children. The court noted that the state's construction of the statute was at odds with the public policy of preserving the family life of the parents and children. Moreover, the court noted that potential criminal liability would also encourage addicted women to terminate or conceal their pregnancies.

Statutes

Child Abuse

FLA. STAT. ch. 39.01 (2000): Among the definitions of “harm” to a child's health and welfare is when a parent, legal custodian, or caregiver responsible for

the child's welfare exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by the mother's use of a controlled substance or alcohol during pregnancy when the child, at birth, is demonstrably adversely affected by such usage; or continued chronic and severe use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

FLA. STAT. ch. 39.828 (2000): The court shall appoint a guardian advocate for an initial term of one year upon a finding that any child named in a petition is or was a drug dependent newborn.

Education

FLA. STAT. ch. 20.43(7)(b) (2000): The State Department of Health is authorized to purchase promotional messages that recognize that alcohol consumption or other substance abuse during pregnancy is detrimental to the public's health.

FLA. STAT. ch. 383.311(2)(d) (2000): Clients and families utilizing birth centers in the state are to be provided information on the effects of smoking and substance abuse.

FLA. STAT. ch. 985.416(4)(e) (2000): The Department of Juvenile Justice must encourage individual district juvenile justice boards to propose an "innovation zone" within their district. In the list of program models for the innovation zone projects, the legislature includes: An infant mortality prevention program that is designed to discourage unhealthy behaviors such as smoking and alcohol or drug consumption, reduce the incidence of babies born prematurely or with low birth weight, reduce health care cost by enabling babies to be safely discharged earlier from the hospital, reduce the incidence of child abuse and neglect, and improve parenting and problem-solving skills.

Identification

FLA. STAT. ch. 383.14 (2000): The Department shall promote the identification and screening of all infants born in this state and their families for factors including substance abuse. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care provider.

Legislative Findings

FLA. STAT. ch. 391.301 (2000): There is an identifiable and increasing number of infants who need developmental evaluation and intervention due to parent risk factors, such as substance abuse. It is the intent of the legislature to establish developmental evaluation and intervention services so that families with high-risk or disabled infants may gain the services and skills they need to support their infants.

Services to Children

FLA. STAT. ch. 411.202(6) (2000): A drug-exposed child is found to be in need of early childhood assistance if there is documented evidence that the mother used illicit drugs or was a substance abuser, or both, during pregnancy and the

child exhibits abnormalities as defined under law.

FLA. STAT. ch. 230.2305(2) (2000): The Pre-Kindergarten Early Intervention Program, whose target population is children who come from low-income families, will also include three- and four-year olds who may not be economically disadvantaged but who are prenatally exposed to alcohol or harmful drugs.

Task Force

FLA. STAT. ch. 411.232 (2000): Florida created a Children's Early Investment Program to reduce the numbers of cocaine babies born in the state.

Treatment

FLA. ADMIN. CODE ANN. r. 64F-4.001 - .010 (2000): Florida regulations for the Department of Health establish a system for reporting and treating drug dependent newborns and pregnant women. The system includes giving out information about the adverse effects of prenatal exposure to alcohol and drugs, reporting pregnant drug users to the appropriate agencies, providing treatment to those women, and investigating the circumstances surrounding the pregnancy. The regulations require reporting abuse under the state's abuse registry.

FLA. STAT. ch. 154.011(4) (2000): Under the Improved Pregnancy Outcome Program, financially eligible women at risk for adverse pregnancy outcomes due to any potential medical complication shall not be denied access to prenatal care. Potential medical complications may arise out of, but not be limited to, alcohol abuse, drug abuse, or delay in obtaining initial prenatal care. The inability of the primary care program to provide funding for hospitalization or other acute services shall not preclude an eligible patient from obtaining prenatal services.

FLA. STAT. ch. 381.0045 (2000): The Targeted Outreach for Pregnant Women Act establishes an outreach program for high-risk pregnant women who may not seek proper prenatal care. Among other services, the program shall link women with substance abuse treatment, when available, and act as a liaison with Healthy Start coalitions, children's medical services, Ryan White-funded providers, and other services of the Department of Health.

GEORGIA

Case Law

State v. Luster, 419 S.E.2d 32 (Ga. Ct. App. 1992): The court found that although a pregnant woman can be prosecuted for drug possession, she cannot be prosecuted for delivery of narcotics to her fetus. Under Georgia law, "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance.... The court ruled that, "the word 'person' in a criminal statute may not be construed to include a fetus unless the legislature has expressly included it, since at common law a fetus was not considered a person." (citing *Billingsley v. State*, 360 S.E.2d 451 (Ga. Ct. App. 1987)).

Statutes

Education

GA. CODE ANN. § 3-1-5 (2000): All retailers of alcoholic beverages for consumption on the premises must post a warning in a conspicuous place that reads: "Warning: Drinking alcoholic beverages during pregnancy can cause birth defects." Failure or refusal to post the sign shall result in a fine not to exceed \$100.00 for each violation.

Third-Party Liability

GA. CODE ANN. § 51-1-46 (2000): Any person injured by an individual drug abuser may bring an action for damages against a person who participated in illegal marketing of the controlled substance used by the individual abuser. Plaintiffs under the statute can include a child whose mother was an individual abuser while the child was in utero.

Treatment

GA. CODE ANN. § 26-5-5 (2000): At a minimum, drug abuse treatment and education programs shall establish criteria for providing priority to drug-dependent pregnant females.

GA. CODE ANN. § 26-5-20 (2000): Any program licensed or funded by the Department of Health shall implement a priority admissions policy for the treatment of drug-dependent pregnant females that provides for immediate access to services for any such female applying for admission, contingent only upon the availability of space.

HAWAII

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

HAW. REV. STAT. § 572-5(d) (2000): The department or its authorized agents shall furnish to each applicant for a marriage license information, to be provided by the department, relating to fetal alcohol and drug syndromes.

Third-Party Liability

HAW. REV. STAT. § 663D-3 (2000) (to be repealed June 30, 2003): The Drug Dealer Liability Act allows an individual who was exposed to an illegal drug in utero to bring an action to recover damages against the distributors and marketers of the illegal drug actually used by the mother.

IDAHO

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes*Child Abuse*

1991 Op. Att'y. Gen. Idaho 5: Idaho's Attorney General stated that Idaho's Child Protective Act, IDAHO CODE § 16-1603, "could be amended by the Idaho Legislature to provide specific legal rights and protections for the unborn," as the state does have a compelling interest in protecting potential human life from gestational drug abuse, but the Act presently would not permit the state to intervene in the case of gestational drug abuse, and an action brought under the Act would likely be dismissed for lack of jurisdiction.

ILLINOIS

Case Law

People v. Bedenkop, 625 N.E.2d 123 (Ill. App. Ct. 1993): A woman was charged with possession of a controlled substance with intent to deliver, and delivery of a controlled substance, after her newborn tested positive for cocaine. The trial court sentenced her to two years of probation, and her child was placed in foster care. After she allegedly failed to appear at a probation hearing, the trial judge sentenced her to seven years in prison. On appeal, the Appellate Court of Illinois reversed the decision and remanded the case back to the trial court, finding that the woman was deprived of her due process rights. The appellate court also noted the trial judge's comment "that he was sentencing [the] defendant to seven years not to punish her, but to prevent her from becoming pregnant." In response, the appellate court stated, "[s]ince the trial court recognized that he could not force defendant to be sterilized, he should also have realized that he could not sentence defendant to seven years imprisonment as a means of pregnancy prevention."

Statutes*Child Abuse*

325 ILL. COMP. STAT. 5/3 (2001): Under the Abused and Neglected Child Reporting Act, a neglected child includes a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn.

705 ILL. COMP. STAT. 405/2-3 (2001): Under the Juvenile Court Act, a neglected or abused minor also includes a newborn infant whose blood, urine, or

meconium contains any amount of a controlled substance or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn.

705 ILL. COMP. STAT. 405/2-18 (2001): Prima facie evidence of abuse or neglect is established with proof that a minor has a medical diagnosis at birth of withdrawal symptoms from narcotics or barbiturates, proof that a minor has a medical diagnosis of fetal alcohol syndrome, or proof that a newborn infant's blood, urine, or meconium contains any amount of a controlled substance, which is not the result of medical treatment administered to the mother or the newborn.

750 ILL. COMP. STAT. 50/1(D)(k) (2001): There is a rebuttable presumption that a parent is unfit with respect to any child to which that parent gives birth where there is a confirmed test result that at birth the child's blood, urine, or meconium contained any amount of a controlled substance or metabolites of such substances, the presence of which in the newborn infant was not the result of medical treatment administered to the mother or the newborn infant; and the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor.

Criminal

720 ILL. COMP. STAT. 570/407.2 (2001): Delivery of a controlled substance to woman known to be pregnant is a Class 1 felony. The perpetrator is subject to a term of imprisonment twice the maximum otherwise authorized under law.

720 ILL. COMP. STAT. 600/3 (2001): Anyone who sells or delivers, for commercial consideration, any item of drug paraphernalia to a woman known to be pregnant is guilty of a Class 2 felony.

Education

20 ILL. COMP. STAT. 505/34.11 (2001): The grandparent child care program, which provides services to grandparents who have custody of their grandchildren, must establish an informational and educational program for grandparents and other relatives who provide primary care for children at risk of child abuse, neglect, or abandonment, or who were born to substance-abusing mothers.

20 ILL. COMP. STAT. 2310/2310-440 (2001): The Department of Public Health is required to conduct an ongoing, statewide education program to inform pregnant women of the medical consequences of alcohol, drug, and tobacco use and abuse.

235 ILL. COMP. STAT. 5/6-24a (2001): The General Assembly finds that there is a need for public information about the risk of birth defects (specifically fetal alcohol syndrome) when women consume alcoholic liquor during pregnancy. The United States Surgeon General has recommended abstinence from alcohol during pregnancy. Since fetal alcohol syndrome and fetal alcohol effects are preventable, the General Assembly finds that it is in the public interest to provide warning about the risk of alcohol-related birth defects at places where alcoholic liquors are sold. Every holder of a retail license, whether the licensee sells or offers for sale alcoholic liquors for use or consumption on or off the retail license premises, shall

cause a sign with the message “Government warning: According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects” to be framed and hung in plain view.

Funding

55 ILL. COMP. STAT. 5/5-1086.1 (2001): The legislature mandated the establishment of a Substance Abuse Services Fund in certain counties. Monies in the substance abuse fund shall only be appropriated by the county board to be used within the county where collected for the establishment and maintenance of facilities and programs for the medical care, treatment or rehabilitation of all persons suffering from substance abuse problems, including the hospitalization of pregnant women who are addicted to alcohol, cannabis, or controlled substances, and for needed care of their newborn children.

720 ILL. COMP. STAT. 570/411.2 (2001): Some collected fines are used for the treatment of pregnant women who are addicted to alcohol, cannabis, or controlled substances and for the needed care of minor, unemancipated children of women undergoing residential drug treatment.

Identification and Reporting

325 ILL. COMP. STAT. 5/7.3b (2001): All persons required to report child abuse may refer to the Department of Human Services any pregnant person in the state who is addicted as defined in the Alcoholism and Other Drug Abuse and Dependency Act. The Department of Human Services shall notify the local Infant Mortality Reduction Network service provider or Department funded prenatal care provider in the area in which the person resides. The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the Department of Human Services or a licensed hospital, which provides substance abuse treatment services. The local Infant Mortality Reduction Network service provider and Department funded prenatal care provider shall monitor the pregnant woman through the service program.

Legislative Findings

740 ILL. COMP. STAT. 20/2 (2001): Abuse of cannabis and controlled substances causes death or severe and often irreversible injuries to newborn children.

Third-Party Liability

740 ILL. COMP. STAT. 57/25 (2001): The Drug Dealer Liability Act provides a civil remedy for damages to persons in a community who are injured as a result of illegal drug use. Such persons include infants who are injured as a result of exposure to drugs in utero.

Treatment

20 ILL. COMP. STAT. 301/5-10 (2001): To ensure a multidisciplinary delivery of services to addicted pregnant women and to instruct them about the effects of substance abuse on infants and guidelines on the symptoms, care, and comfort of drug-withdrawing infants, the Department of Health must conduct and report

demographic research, seek funding for, and establish effective outreach programs targeted to, women at risk, maintain up-to-date referral lists of treatment providers, create and publish educational materials, and create a manual for service providers to assist them in identifying women at risk.

20 ILL. COMP. STAT. 301/35-5 (2001): In order to promote a comprehensive, statewide, and multidisciplinary approach to serving addicted pregnant women, the Department of Health shall have responsibility for an ongoing exchange of referral information among those who provide medical and social services to pregnant women, whether or not there exists evidence of alcoholism or other drug abuse or dependency, and providers of treatment services to women affected by alcoholism or other drug abuse or dependency.

20 ILL. COMP. STAT. 301/35-10 (2001): The Adolescent Family Life Program is designed to document the incidence of and coordinate services to high-risk pregnant adolescents who use alcohol in excess, who are addicted to a controlled substance, or who habitually use cannabis during pregnancy.

305 ILL. COMP. STAT. 5/5-5 (2001): Health care providers are required to recommend, to any pregnant woman who is suspected of drug abuse or is addicted, referral to a local substance abuse treatment provider or to a licensed hospital that provides substance abuse treatment services. The Department of Health and the Department of Human Services may provide information about substance abuse during pregnancy in a public awareness campaign. The statute prohibits the Illinois Department of Public Aid and the Department of Human Services from sanctioning a recipient based solely on her substance abuse.

INDIANA

Case Law

Herron v. State, 729 N.E.2d. 1008 (Ind. Ct. App. 2000): The state charged a woman with neglect of her newborn based on her ingestion of cocaine during pregnancy and the subsequent birth of her child with cocaine present in his system. The trial court denied the mother's motion to dismiss, and on appeal, the Indiana Court of Appeals found that the "neglect of a dependent statute," IND. CODE § 35-46-1-4, did not apply to the defendant's drug use during pregnancy because an unborn child is not a dependent. The court noted that the statute defined a dependent as "an unemancipated person who is under eighteen years of age," or "a person of any age who is mentally or physically disabled." The court concluded, "we cannot expand the General Assembly's definition of a dependent and, consequently, the intended application of the neglect of a dependent statute, beyond the fair meaning of the words used. IC 35-46-1-1 and IC 35-46-1-4 do not criminalize conduct that occurs prior to a child's birth."

State v. Barnett, No. 021304-9308-CF-61 1, order (Ind. Super. Ct. 1994): The court dismissed reckless homicide charges against a woman who allegedly used drugs during pregnancy, and whose baby was born alive and subsequently died.

Statutes***Child Abuse***

IND. CODE § 31-9-2-14 (2000): Child abuse or neglect refers to a child who is alleged to be in need of services.

IND. CODE § 31-34-1-10 (2000): A child is in need of services if (1) the child is born with fetal alcohol syndrome or any amount of a controlled substance or a legend drug in the his/her body; and (2) the child needs care, treatment, or rehabilitation that he/she is not receiving, or is unlikely to be provided or accepted without the coercive intervention of the court.

IND. CODE § 31-34-1-11 (2000): A child is in need of services if the child (1) has an injury, abnormal physical or psychological development, or is at a substantial risk of a life threatening condition as a result of the mother's use of alcohol, a controlled substance, or a legend drug during pregnancy; and (2) the child needs care, treatment, or rehabilitation that the child is not receiving or is unlikely to be provided or accepted without the coercive intervention of the court.

IND. CODE §§ 31-34-1-12, 31-34-1-13 (2000): A child is not in need of services if a mother uses legend drugs or controlled substances with a physician's prescription and makes a good-faith attempt to follow the prescription.

IND. CODE § 31-34-2-2 (2000): A law enforcement official may take into custody anyone who is believed to be the alleged perpetrator of an act against a child who the law enforcement officer believes to be a child in need of services as a result of the alleged perpetrator's act. The individual is to be taken into custody only for the purpose of removing the alleged perpetrator from the residence where the child believed to be in need of services resides.

IND. CODE § 31-34-20-1 (2000): If a child is found to be in need of services, a juvenile court may order a variety of remedies, including removing the child from the home, requiring the parents of the child or the child to receive services, fully emancipating the child, or entering a protective order on behalf of the child.

Third-Party Liability

IND. CODE § 34-24-4-2 (2000): The Drug Dealer Liability Act allows individuals who were exposed to an illegal drug in utero to bring an action for damages caused by an individual drug user's use of an illegal drug.

Iowa***Case Law***

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes***Child Abuse***

IOWA CODE § 232.68(2)(f) (2001): Child abuse includes when an illegal drug

is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.

Education

IOWA CODE § 135G.9 (2001): Among the information to be given to clients and families utilizing birth centers is information on the effects of smoking and substance abuse on a developing fetus.

Task Force

IOWA CODE § 235C.1-.3 (2001): A Council on Chemically Exposed Infants and Children is established to help the state develop and implement policies to reduce the likelihood that infants will be born chemically exposed, and to assist those who are born chemically exposed to grow and develop in a safe environment. The Council is responsible for: collecting data on chemically exposed infants and the costs of caring for such infants; making recommendations on public awareness campaigns and training for medical providers; developing strategies for identification and intervention; seeking funding to enhance treatment services to women and children; developing strategies for identifying chemically exposed infants when they enter the school system and providing special services to them; assisting in expanding "appropriate placement options for chemically exposed infants and children who have been abandoned by their parents or cannot safely be returned home;" and determining whether treatment providers are discriminating against substance abusing pregnant women.

Testing and Reporting

IOWA CODE § 232.77(2) (2001): If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the health practitioner may perform a medically relevant test on the child. The practitioner shall report any positive results of such a test on the child to the department. A positive test result obtained prior to the birth of a child shall not be used for the criminal prosecution of a parent for acts and omissions resulting in intrauterine exposure of the child to an illegal drug.

Treatment

IOWA CODE § 125.32A (2001): Any state substance abuse treatment program may not discriminate against a person seeking treatment solely because the person is pregnant, unless the program in each instance identifies and refers the person to an alternative and acceptable treatment program.

KANSAS

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

*Statutes**Education*

KAN. STAT. ANN. § 65-1,161 (2000): The Secretary of Health and Environment shall provide educational materials and guidance to health care professionals who provide health services to pregnant women for the purpose of assuring accurate and appropriate patient education. Such materials and guidance shall address the services that are available to pregnant women from local health departments and the perinatal effects of the use of tobacco, the use of alcohol, and the use of any controlled substance.

KAN. STAT. ANN. § 65-1,162 (2000): The Secretary of Health and Environment shall provide an educational program to health care professionals who provide health care services to pregnant women for the purpose of assuring accurate and appropriate patient education regarding the effects of drugs on pregnancy and fetal outcome; taking accurate and complete drug histories; and counseling techniques for drug abusing women to improve referral to and compliance with drug treatment programs.

KAN. STAT. ANN. § 65-1,166 (2000): The Secretary of Health and Environment shall maintain a toll-free information line for the purpose of providing information on substance abuse treatment and referrals for substance abusing pregnant women.

Identification and Reporting

KAN. STAT. ANN. § 65-1,163 (2000): The Secretary of Health and Environment shall develop a risk assessment profile to assist health care providers screen pregnant women for prenatal substance abuse. Any health care provider who identifies a pregnant woman as at-risk for prenatal substance abuse may refer such woman, with her consent, to the local health department for service coordination.

Treatment

KAN. STAT. ANN. § 65-1,165 (2000): A pregnant woman referred for substance abuse treatment shall be a first priority user of substance abuse treatment available through social and rehabilitation services. All records and reports regarding such pregnant woman shall be kept confidential. Family oriented substance abuse treatment is available. Substance abuse treatment facilities that receive public funds shall not refuse to treat women solely because they are pregnant.

KENTUCKY

Case Law

Commonwealth v. Welch, 864 S.W.2d 280 (Ky. 1993): A woman was charged with criminal abuse because her newborn suffered from neonatal abstinence syndrome as a result of the mother's intermittent drug use during pregnancy. The trial court found her guilty of criminal abuse under KY. REV. STAT. ANN. § 508.110. The court of appeals vacated the conviction of criminal abuse and on appeal, the Kentucky Supreme Court affirmed the court of appeal's decision. The court held that KY. REV. STAT. ANN. § 508.110 could not be used to prosecute a mother for injury to an unborn child because it would violate legislative intent. The court also observed that the Kentucky Maternal Health Act of 1992 amends KY. REV. STAT. ANN. § 218A.990 to enhance punishment for those who traffic controlled substances to a pregnant woman, but provides no additional punitive measures for maternal drug use during pregnancy. The court stated that the General Assembly thus had not intended to criminalize maternal self-abuse that leads to damage in the newborn, but had opted instead to create public health initiatives to combat the problem.

*Statutes**Education*

KY. REV. STAT. ANN. § 200.703 (Michie 2001): The Healthy Babies Work Group shall collaborate on development and implementation of a public awareness campaign to inform the citizens of the Commonwealth about the benefits of good nutrition, folic acid, smoking cessation, healthy lifestyle choices that lead to healthy babies, the effects of alcohol and substance abuse on fetal and early childhood development, and the need for a vision examination of children at age three.

Identification and Reporting

KY. REV. STAT. ANN. § 214.160 (Michie 2001): Attending health care practitioners may screen pregnant women for alcohol or substance dependency or abuse by administering a toxicology test to a pregnant woman and/or her newborn infant within eight hours after delivery. The attending physician has the duty to evaluate positive test results and to determine whether to make a report to the state. Toxicology testing cannot be done without first providing notice of the purpose of the test to the woman, and no prenatal screening for alcohol or other substance abuse or positive toxicology finding shall be used as prosecutorial evidence.

Task Forces and Research

KY. REV. STAT. ANN. § 214.175 (Michie 2001): The Cabinet for Health Services may conduct periodic anonymous surveys to determine the prevalence within the Commonwealth of drug and alcohol use during pregnancy. These periodic surveys may include, but are not limited to, toxicology tests to determine the presence of alcohol, controlled substances, or other drugs, which have not been prescribed due to medical necessity. Testing may be done without a physician's order and

without the consent of the patient or parent. Results of individual toxicology tests are confidential, not admissible in court, and are to be compiled in an anonymous, aggregate fashion.

KY. REV. STAT. ANN. § 222.021 (Michie 2001): There is hereby created within the Cabinet for Health Services a Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group. The Work Group shall carry out the planning and coordinating activities of the Commonwealth with regard to smoking cessation and prevention, and substance dependency and abuse, among pregnant women and other women of childbearing age.

KY. REV. STAT. ANN. § 222.037 (Michie 2001): The Cabinet for Health Services may establish four or more pilot projects within the Commonwealth to demonstrate the effectiveness of different methods of providing community services to prevent smoking, alcohol, and substance abuse by pregnant females; improving agency coordination to better identify the pregnant smoker and substance abuser and other females who have smoking and substance abuse problems; linking with community services and treatment for the chemically dependent woman, her children, and other family members; and gaining access to early intervention services for infants in need.

LOUISIANA

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Legislative Mandates

LA. REV. STAT. ANN. § 46:2505 (West 2000): The Department of Health and Hospitals shall establish a program to provide addictive disorders services to eligible pregnant women. Such services shall ensure the availability of appropriate addictive disorders treatment programs that do not discriminate against pregnant women or women with young children. The program will increase public awareness about addictive disorders; develop criteria giving pregnant women priority access to publicly funded addictive disorders treatment programs; develop residential treatment programs designed for addiction-disordered women and children; and encourage health care professionals to identify addiction-disordered pregnant women and make referrals to programs.

Task Forces

LA. REV. STAT. ANN. § 40:2018 (West 2000): The Commission on Perinatal Care and Prevention of Infant Mortality is created to research state laws that impact perinatal care, compile information about infant mortality, and propose a plan for an equitable system of financing comprehensive health and social services for indigent pregnant women and infants. Among the goals of the Commission to

educate women of child-bearing age on the hazards of smoking, alcohol, pharmaceutical products, and other drugs during pregnancy and nursing.

LA. REV. STAT. ANN. § 46:2511 (West 2000): The legislature recognizes the need for increased public awareness regarding the desire for drug- and alcohol-free pregnancies to reduce the incidence of chemically exposed infants. The Council to Prevent Chemically Exposed Infants is thus established to assist the state in developing policies to reduce the likelihood that infants will be born chemically exposed.

LA. REV. STAT. ANN. § 46:2514 (West 2000): The Council shall gather data and make recommendations to assist the state in developing policies to reduce the number of infants who are born chemically exposed and shall report its findings and recommendations. The council is directed to submit a report regarding state laws, policies, or programs to reduce the incidence of chemically exposed infants and to improve effective treatment services for pregnant women and chemically exposed infants; about how to improve services to pregnant substance users; and on conducting a public education campaign aimed at the general public, health care professionals, and at-risk populations.

Third-Party Liability

LA. REV. STAT. ANN. § 9:2800.63 (West 2000): An individual who was exposed to an illegal controlled substance in utero may bring an action for damages caused by an individual's use of an illegal controlled substance against the person who sold, administered, or furnished an illegal controlled substance to the individual user, and other people enumerated in the statute.

MAINE

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Adoption

ME. REV. STAT. ANN. tit. 18-A, § 9-30.4 (West 2000): A current medical, psychological, and developmental history of the child for adoption is to be provided to prospective parents. This record is to include an account of the child's prenatal care and medical condition at birth, results of newborn screening, any drug or medication taken by the child's biological mother during pregnancy, any subsequent medical, psychological or psychiatric examination and diagnosis the biological parents' use of drugs and alcohol, the health of the biological mother during her pregnancy, and the health of the biological parents at the time of the child's birth.

MASSACHUSETTS

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

*Statutes**Child Abuse*

MD. CTS. & JUD. PROC. § 3-801.1 (2001): There is a presumption that a child is not receiving ordinary and proper care and attention if the child was born addicted to or dependent on cocaine, heroin, or a derivative thereof, or was born with a significant presence of cocaine, heroin, or a derivative thereof in the child's blood as evidenced by toxicology or other appropriate tests.

MD. CODE ANN., FAM. LAW § 5-313(d)(1)(iv) (2001): In determining whether it is in the best interest of the child to terminate a natural parent's rights to the child...the court shall consider the factors in subsection (c) of this section and whether the child was born: (a) addicted to or dependent on cocaine, heroin, or a derivative thereof; or (b) with a significant presence of cocaine, heroin, or a derivative thereof in the child's blood as evidenced by toxicology.

MD. CODE ANN., FAM. LAW § 5-710(b) (2001): Promptly after receiving a report from a hospital or health practitioner of suspected neglect related to drug abuse and conducting an appropriate investigation, a local department of social services may file a petition alleging that the child is in need of assistance, offer the mother admission into a drug treatment program, and initiate a judicial proceeding to terminate a mother's parental rights, if the local department offers the mother admission into a drug treatment program within ninety days after the birth of the child and the mother does not accept admission to the program or its equivalent within forty-five days after the offer is made or fails to fully participate in the program or its equivalent.

Task Force

MD. ANN. CODE, art. 41, § 18-316 (2001): A task force was established to study increasing the availability of substance abuse programs. One task includes the development of a comprehensive strategy for funding substance abuse programs and examining the availability of substance abuse programs designed for women, pregnant women, and women with children.

Treatment

MD. CODE ANN., FAM. LAW § 5-706.3 (2001): The Department of Human Resources, in conjunction with the Department of Health and Mental Hygiene, is required to develop intervention systems in four of the state's counties to provide drug treatment for mothers whose children are born exposed to drugs, as well as supportive services for the family of the children.

MD. CODE ANN., HEALTH-GEN. § 8-403.1 (2001): In consultation with the Office of Maternal Health and Family Planning, the Administration shall develop a

referral procedure to require alcohol abuse and drug abuse treatment programs or facilities that are owned or operated by the state or any of its political subdivisions, or that receive partial or full funding from the state, to operate an alcohol abuse and drug abuse treatment program to accept pregnant or postpartum women for treatment on a priority basis.

MD. CODE ANN., HEALTH-GEN. § 15-103(b)(9) (2001): Each managed care organization shall provide or assure alcohol and drug abuse treatment for substance abusing pregnant women and all other enrollees of managed care organizations who require these services.

MASSACHUSETTS

Case Law

Commonwealth v. Pellegrini, 608 N.E.2d 717 (Mass. 1993): A woman was prosecuted for possession of narcotics after her newborn tested positive for cocaine metabolites. In reversing the trial court's decision to dismiss the case, the Massachusetts Supreme Judicial Court did not decide the issue of whether a newborn's hospital records, which revealed cocaine metabolites in the child's urine, could be used to prosecute the mother for possession of narcotics. However, the court did cite MASS. GEN. LAWS ch. 119, § 51A, stating that the legislature has recognized that prenatal exposure to a controlled substance is probative of neglect by the mother. The case was remanded to the superior court.

Statutes

Education

MASS. GEN. LAWS ch. 29, § 2GG(C) (2001): Funding for the support of community health centers and their programs of prenatal and maternal care is contingent on their incorporation of smoking cessation assistance and guidance regarding the harmful effects of smoking on fetal development.

MASS. REGS. CODE tit. 105, § 142.620(E) (2001): All Department of Health operated and maintained birth centers must provide a program of prenatal education that shall include the importance of nutrition, preparation for birth and breast feeding, and information on adverse effects of smoking, alcohol, and other drugs.

Funding

MASS. REGS. CODE tit. 130, § 418.410 (2001): The Division of Medical Assistance will pay for special substance abuse treatment services for pregnant women.

Reporting

MASS. GEN. LAWS ch. 119, § 51A (2001): If a child is determined to be physically dependent upon an addictive drug at birth, the provider must immediately report such condition to the Department of Public Welfare by oral communication.

Treatment

MASS. REGS. CODE tit. 105, § 130.615(H) (2001): Every maternal-newborn service shall have written protocols for the hospital management and support of patients from identified groups in the population served by the facility, who have special needs, e.g., adolescents, and mothers with known cognitive impairments, psychiatric or substance abuse problems.

MASS. REGS. CODE tit. 105, § 750.720 (C)(5) (2001): All methadone treatment programs in the state must take precautions with pregnant women on methadone maintenance programs because of all its attendant dangers during pregnancy. Dosage levels shall be maintained as low as possible, and the treatment center must make arrangements for the provision of prenatal and delivery services.

MICHIGAN

Case Law

People v. Hardy, 469 N.W.2d 50 (Mich. Ct. App. 1991): Hardy was prosecuted for the delivery of drugs to her newborn infant. The prosecutor focused on the time between when the infant was born (hence obtaining legal personhood) and the moment the umbilical cord was cut, and charged that the blood flow via the umbilical cord constituted drug delivery to a minor. The court of appeals rejected this argument, noting that the drug delivery statutes did not specifically cover prenatal drug use, that “penal statutes are strictly construed, absent a legislative statement to the contrary. . .,” and that the courts are not the place to interpret laws broadly.

In Re Baby X, 293 N.W.2d 736 (Mich. Ct. App. 1980): Baby X, within twenty-four hours of birth, began exhibiting symptoms of drug withdrawal. The Department of Social Services petitioned the probate court to assert jurisdiction over the child because of the mother’s neglect, and the probate court granted that petition. The Michigan Court of Appeals held that “a newborn suffering narcotics withdrawal syndrome as a consequence of prenatal maternal drug addiction may properly be considered a neglected child....” The court did not rule on whether prenatal drug use was sufficient for permanent loss of parental rights, but only that it was sufficient for temporary loss of custody.

People v. Bremer, No. 90-32227-FH, slip op. (Mich. Cir. Ct. Jan. 31, 1991): The circuit court dismissed drug delivery charges on principles of statutory construction, due process, and privacy, holding that the interpretation of the drug delivery law to cover ingestion of cocaine by a pregnant woman would be a radical departure from existing law.

People v. Cox, No. 90-53454-FH, slip op. (Mich. Cir. Ct. July 9, 1990): The circuit court granted the motion to dismiss on grounds that the drug delivery statute is not intended to regulate conduct during pregnancy and that prosecution would not be in the best interest of public health, safety, and welfare.

Statutes

Adoption

MICH. COMP. LAWS § 710.27 (2000): The prospective adoptive parent is to be provided with a written document containing an account of the child's prenatal care; medical condition at birth; and any drug or medication taken by the child's mother during pregnancy.

Reporting

MICH. COMP. LAWS § 722.623a (2000): A person who by law is required to report suspected child abuse or neglect, and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body, shall report this information to the agency for child protection.

Third-Party Liability

MICH. COMP. LAWS § 691.1607 (2000): A person injured by an individual drug abuser may bring an action for damages against a person who participated in illegal marketing of the substance used by the individual abuser. If the plaintiff is a child whose mother was an individual abuser while the child was in utero, then the defendant is presumed to have injured the plaintiff and to have acted willfully and wantonly.

MINNESOTA

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Child Abuse

MINN. STAT. § 626.556(2)(c) (2000): Neglect is defined as, among other things, prenatal exposure to a controlled substance used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.

Education

MINN. STAT. § 214.12(3) (2000): The board of medical practice and the board of nursing shall require that family practitioners, pediatricians, obstetricians and gynecologists, and other licensees who have primary responsibility for diagnosing and treating fetal alcohol syndrome in pregnant women or children receive education on the subject of fetal alcohol syndrome and fetal alcohol effects, including how to: (1) screen pregnant women for alcohol abuse; (2) identify affected children; and (3) provide referral information on needed services.

MINN. STAT. § 340A.410 (2000): Any licensed retailer of alcoholic beverages must post a sign that includes a warning statement regarding drinking alcohol while pregnant.

Identification, Testing, and Reporting

MINN. STAT. § 253B.02(2) (2000): A chemically dependent person includes a pregnant woman who has engaged in habitual or excessive use, for a nonmedical purpose, of any of the following controlled substances or their derivatives during pregnancy: cocaine, heroin, phencyclidine, methamphetamine, or amphetamine.

MINN. STAT. § 383B.225(5)(16) (2000): All sudden or unexpected deaths and all deaths which may be due entirely, or in part, to any factor other than natural disease must be reported to the medical examiner for evaluation. These deaths include, among others, deaths of unborn or newborn infants in which there has been maternal use of, or exposure to, unprescribed controlled substances.

MINN. STAT. § 626.5561 (2000): Mandated reporters of child abuse and neglect must immediately report to the local welfare agency if the person knows, or has reason to believe, that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy. If the report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the local welfare agency shall immediately conduct an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care.

MINN. STAT. § 626.5562 (2000): A physician shall administer a toxicology test to a pregnant woman under the physician's care if the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose, within eight hours after delivery to determine whether there is evidence that she has ingested a controlled substance. If the test results are positive, the physician shall report the results under section 626.5561. A negative test result does not eliminate the obligation to report under section 626.5561, if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose.

MINN. STAT. § 626.5563 (2000): The definition of "abuse of alcohol" includes women who required alcohol detoxification during pregnancy or who had positive alcohol-screening tests. In addition, if a woman is referred for substance abuse screening and fails to either complete screening or comply with recommendations, a report must be filed with a local welfare agency. Local welfare agencies are required to react to such reports within five working days by conducting an assessment and offering services.

Task Force

MINN. STAT. § 145.9265 (2000): The commissioner of health, in coordination with the commissioner of children, families, and learning, and the commissioner of human services, shall design and implement a coordinated prevention effort to reduce the rates of fetal alcohol syndrome and fetal alcohol effects, and reduce the number of drug-exposed infants.

Treatment

MINN. STAT. § 254A.17 (2000): The state shall develop comprehensive maternal and child health and social service programs to address the needs of children exposed to controlled substances and alcohol at birth. Treatment programs are to be developed for children between the ages of six and twelve, who are in need of chemical dependency treatment. Early intervention programs are to be developed to identify and provide services to children and families at risk due to substance abuse.

MINN. STAT. § 254B.01(3) (2000): Considered chemically dependent, under MINN. STAT. § 253B.02(2), women who use a controlled substance during pregnancy qualify for treatment and prevention services, including halfway houses, aftercare, psychological care, and case management.

Mississippi

Case Law and Statutes

No court cases or statutes strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Missouri

Case Law

In re F.N.M., 951 S.W.2d. 702 (Mo. Ct. App. 1997): An infant was born twelve weeks premature due to prenatal exposure to alcohol, marijuana, cocaine, and heroin. The Missouri Division of Family Services took custody of the newborn upon release from the hospital. The court terminated the mother's parental rights, in part due to her use of drugs during pregnancy. Although there were several other factors involved in the court's decision, the court stated that the "mother's drug and alcohol abuse during pregnancy directly caused her son's physical problems."

Statutes

Education

MO. REV. STAT. § 191.735(2) (2001): Multidisciplinary teams are trained in health issues affecting pregnant mothers and their babies, care in the home for medically complex infants, developmental impairments of exposed infants, and treatment resources for drug-abusing families.

MO. REV. STAT. § 191.725 (2001): Every licensed physician who provides obstetrical or gynecological care to a pregnant woman shall counsel all patients as to the perinatal effects of smoking cigarettes, the use of alcohol, and the use of any controlled substance. Such physicians shall further have all patients sign a written statement, the form of which will be prepared by the director of the Department of Health, certifying that such counseling has been received.

MO. REV. STAT. § 191.727 (2001): A program will be created to provide education to physicians who care for pregnant women. The program will discuss how to take complete drug histories from pregnant patients, the effects of cigarettes, alcohol, and controlled substances on pregnancy, and counseling techniques.

MO. REV. STAT. § 191.733 (2001): The Department of Health shall establish and maintain a toll-free information line for the purpose of providing information on resources for substance abuse treatment, and for assisting with referrals for substance abusing pregnant women.

MO. CODE REGS. ANN. tit. 9, § 30-3.850(45)(F) (2001): The Department of Mental Health's Comprehensive Substance Treatment and Rehabilitation programs must provide clients with basic information regarding the effects of alcohol and other drug abuse upon pregnancy and child development.

Funding

MO. REV. STAT. § 191.835 (2001): The Division of Alcohol and Drug Abuse of the Department of Mental Health shall establish a community grants program, to be known as "Community 2000," which shall make funds available to municipalities for the purpose of preventing alcohol and drug abuse. One of the goals of the local commissions must be the reduction of prenatal and perinatal exposure to alcohol and other drugs.

Identification, Referral, and Reporting

MO. REV. STAT. § 191.741 (2001): Upon notification by a physician or health care provider that a pregnant woman has been identified as having a high-risk pregnancy, the Department of Health shall offer service coordination services to such woman. Service coordination services shall include a coordination of social services, health care, and mental health services.

MO. REV. STAT. § 191.737 (2001): A physician may refer a woman to the Department of Health when her newborn has signs and symptoms consistent with controlled substance or alcohol exposure at birth, or after a positive toxicology test for controlled substances performed at birth on the mother or the child. The Department of Health shall coordinate social services, health care, mental health services, and needed education and rehabilitation services.

Research

MO. REV. STAT. § 191.745 (2001): The Department of Health is required to conduct periodic tests on samples of pregnant women and infants for the presence of alcohol and drugs to determine the prevalence of prenatal substance abuse. The testing is to be done anonymously.

Treatment

MO. REV. STAT. § 191.743 (2001): Any physician or health care provider who provides services to pregnant women shall identify all such women who have high-risk pregnancies. The physician or health care provider shall upon identification inform such woman of the availability of services and the option of referral to the Department of Health. Upon consent by the woman identified as having a high-

risk pregnancy, the physician or health care provider shall make a confidential report to the Department of Health.

MO. REV. STAT. § 191.731 (2001): A pregnant woman referred for substance abuse treatment shall be a first priority user of available treatment. All records and reports regarding a pregnant woman shall be kept confidential. The Division of Alcohol and Drug Abuse shall ensure that family oriented substance abuse treatment be available, as appropriations allow. Substance abuse treatment facilities, which receive public funds, shall not refuse to treat women solely because they are pregnant.

MO. CODE REGS ANN. tit. 9, § 30-3.610 (2001): The Department of Mental Health established minimum criteria for admission to methadone clinics but priority for admission shall be given to women who are pregnant.

MONTANA

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Treatment

MONT. ADMIN. R. 8.4.505 (2000): A drug or alcohol abusing pregnant woman is considered to have a high-risk pregnancy and can only be treated by a primary care physician. A licensed direct entry midwife cannot accept high-risk pregnant women as patients.

NEBRASKA

Case Law

State v. Arandus, No. 93072, slip op. (D. Neb. June 17, 1993): The district court granted a motion to quash the indictment of a woman for child abuse due to her prenatal alcohol use. It concluded that the legislature did not intend for Nebraska's child abuse statute, NEB. REV. STAT. 28-707(1)(a), to apply to unborn children.

Statutes

Services

NEB. REV. STAT. § 68-1058 (2001): This statute provides case management services to high-risk pregnant women eligible for medical assistance under section 1915(g) of the federal Social Security Act. In determining risk, factors including, but not limited to, age, education, alcohol or drug dependency, weight, and medical and psychosocial conditions will be considered. Case management services are services that will assist eligible individuals in gaining access to needed

medical, social, educational, and other services.

NEVADA

Case Law

Washoe County, Nev. v. Cathy Encoe, 885 P.2d 596 (Nev. 1994): The Supreme Court of Nevada considered whether NEV. REV. STAT. 200.508, a statute criminalizing child endangerment, applies to a mother's prenatal substance abuse, which results in the transmission of an illegal substance to her child through the umbilical cord between the time the child leaves the womb, and the time the umbilical cord is severed. After her newborn tested positive for methamphetamines, the mother was charged with willfully endangering her child pursuant to NEV. REV. STAT. 200.508, which reads in part, "a person who. . .willfully causes a child who is less than 18 years of age to suffer. . .as a result of abuse or neglect. . .is guilty of a gross misdemeanor unless a more severe penalty is prescribed...." Although the state conceded that a fetus cannot be considered a child under this statute, it maintained that the mother violated the statute while the umbilical cord was still intact, immediately after delivery. The Supreme Court of Nevada held that prosecuting a woman for delivering controlled substances "to her child through the umbilical cord is a strained and unforeseen application of NRS 200.508. To interpret this section to cover a mother's ingestion of illegal substances prior to the birth of her child would be a radical incursion upon existing law."

Statutes

Child Abuse

NEV. REV. STAT. 432B.330(1)(b) (2001): A child is considered to be in "need of protection," if, among other things, "[h]e is suffering from congenital drug addiction or the fetal alcohol syndrome, because of the faults or habits of a person responsible for his welfare." If a child is found to be "in need of protection," the state will investigate the need for social services.

Taskforce

NEV. REV. STAT. 442.355 (2001): In 1999, the legislature created the Advisory Subcommittee on Fetal Alcohol Syndrome of the Advisory Board on Maternal and Child Health. The subcommittee's purpose is to develop and carry out programs relating to the prevention and treatment of fetal alcohol syndrome.

Public Assistance

NEV. REV. STAT. 422.29316 (2001): Although generally a person convicted of a drug felony after August 22, 1996, is not eligible to receive federal public assistance, a pregnant woman who has been convicted of a drug felony, and who is participating in, or has successfully completed, a drug treatment program, does not fall within that categorical exception.

NEV. REV. STAT. 442.395 (2001): If a pregnant woman is referred to the health

division by a provider of health care or other services for information about programs designed to prevent and treat fetal alcohol syndrome, any report relating to the referral or other associated documentation is confidential and may not be used in any criminal prosecution of the woman.

NEW HAMPSHIRE

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

N.H. REV. STAT. ANN. § 457:23II (2000): Couples who apply for marriage licenses must receive a brochure, prepared by the Department of Health and Human Services, concerning fetal alcohol syndrome. In addition, couples must sign an affidavit on the back of the marriage license, which affirms that they have both received and discussed this brochure.

Taskforce

N.H. REV. STAT. ANN. § 132:19 (2000): This statute establishes a perinatal alcohol, tobacco, and other drug use task force. The task force is composed of legislators and other state representatives, medical and public health professionals, and members of the community.

N.H. REV. STAT. ANN. § 132:20 (2000): The duties of the task force include investigating and studying the problems of alcohol, tobacco, and other drug use as they relate to pregnant women and their infants, recommending legislative actions to provide necessary relief, collaborating with other state agencies to address the problems, holding public hearings, and submitting an annual report detailing the key findings and actions taken by the task force.

Treatment

N.H. REV. STAT. ANN. § 318-B:10.VIII(a) (2000): Methadone may be administered, prescribed, and dispensed to pregnant and postpartum heroin addicts, and administered as part of an alcohol and drug abuse treatment program.

NEW JERSEY

Case Law

New Jersey v. Barker, No. 96-02-605 (N.J. Super. Ct. Feb. 14, 1997): The defendant delivered a pre-viable fetus at twenty-four weeks of pregnancy. State prosecutors subsequently charged her with first-degree aggravated manslaughter and second-degree endangering the welfare of a child, alleging that she used

illegal controlled substances during her pregnancy, which caused the death of her premature fetus. The court dismissed both charges, holding that the New Jersey legislature did not intend for criminal statutes to apply to prenatal conduct.

Statutes

Adoption

N.J. STAT. ANN. § 9:3-41.1 (West 2001): Adoption agencies are required to provide prospective adoptive parents with information concerning the child's background, including the parent's complete medical histories any drugs or medications taken during pregnancy and any other conditions of the parent's health that may be a factor influencing the child's present or future health.

Criminal

N.J. STAT. ANN. § 2C:35-8 (West 2001): Enhanced sentencing of twice the term of imprisonment, fine, penalty, or parole ineligibility is to be imposed on a person who is convicted of distributing controlled substances to a pregnant woman. A person charged under this statute cannot use the defense that he/she did not know that the woman was pregnant.

Custody

N.J. STAT. ANN. § 30:4C-11 (West 2001): This statute enables various parties, including family relatives or public officials, to apply to the Division of Youth and Family Services when a child's safety or welfare is endangered. The application may ask for the division to accept and provide care to, or custody of, the child as required. The provisions of this section are deemed to include an application on behalf of an unborn child when the prospective mother is within this state at the time of application for such services.

Education

N.J. STAT. ANN. § 33:1-12a (West 2001): Under the Alcoholic Beverage Control Act, most persons who hold a Class C license must post notices, prepared by the Department of Health, that warn "patrons that alcohol consumption during pregnancy has been determined to be harmful to the fetus and can cause birth defects, low birth weight and Fetal Alcohol Syndrome, which is one of the leading causes of mental retardation."

Identification and Reporting

N.J. ADMIN. CODE tit. 8, § 20-1.2(a)1.i.(28) (2001): State regulations provide that any infant born in the state who is diagnosed with a birth defect must be reported to the State Department of Health, Special Child Health Services Program. The list of birth defects includes fetal alcohol syndrome and probable fetal alcohol syndrome.

NEW MEXICO

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

N.M. STAT. ANN. § 60-6E-2 (Michie 2000): New Mexico requires an Alcohol Server Education program for persons employed in the alcoholic beverage service industry. The program includes the study of the prevention of fetal alcohol syndrome and is intended, among other things, to prevent fetal alcohol syndrome and reduce the frequency of alcohol-related birth defects.

N.M. STAT. ANN. § 60-6A-30 (Michie 2000): With few exceptions, any person holding a liquor license shall post in a conspicuous place a sign in both English and Spanish that reads as follows: "Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

Task Force

N.M. STAT. ANN. § 6-4-8B(12) (Michie 2000): The Legislature created the "DWI program fund" for the purposes specified in the statute, which include the appropriation of funds "to the school of medicine at the university of New Mexico for prevention, research and intervention in the field of fetal alcohol syndrome."

Reporting

N.M. ADMIN. CODE tit. 8, § 27.3.24.1.1 (2001): When a child is placed in substitute care or presented to a substitute care provider for the purpose of placement in foster care, the provider shall be given various pieces of information about the child, including whether the child is "at risk for or diagnosed with Fetal Alcohol Syndrome."

Services

N.M. ADMIN. CODE tit. 7, § 30.8.7.25 (2001): One of the requirements for family infant toddler early intervention services is that the child is an "eligible" child. An "eligible" child is defined as one with an "established condition," which includes fetal alcohol syndrome.

NEW YORK

Case Law

In re Nassau County Dep't of Social Services, 661 N.E.2d 138 (N.Y. 1995): The New York Court of Appeals considered whether a newborn's positive toxicology screen for a controlled substance is enough, by itself, to conclude that a newborn is neglected. The court found that additional evidence is generally required for a finding of neglect.

In re Alex MM, 688 N.Y.S.2d 707 (N.Y. App. Div. 1999): The state took temporary custody of a three-week old infant due to his mother's use of cocaine during pregnancy and the child's positive test result for cocaine at birth. The court affirmed the state's temporary action and permanently terminated the mother's parental rights after she failed to maintain contact or communication during the temporary removal.

In re Unborn Child, 683 N.Y.S.2d 366 (N.Y. Fam. Ct. 1998): The court considered whether the N.Y. Family Court Act § 1012 (2000), which defines a neglected child, applies to an unborn fetus. In this case, a woman continued to use cocaine during her pregnancy and failed to abide by a court order to obtain drug rehabilitation. The court stated that the legislature "demonstrate[s] intent to protect the unborn. . .It defies logical reasoning that our laws and society would preclude a mother from illegally introducing narcotics and other illegal drugs into her child, and yet not protect the unborn child from those same dangers while the child is still in the womb." Therefore, to protect an unborn child from a substantial risk of harm from prenatal use of illegal drugs, a court can issue an order precluding a pregnant mother from continuing to use such drugs during the remainder of the pregnancy.

In re Detention of Tanya P., No. 530069/93, slip op. (N.Y. Sup. Ct. 1995): The court found that involuntary commitment of a woman who used drugs during her pregnancy, in order to protect her fetus, was unconstitutional.

People v. Morabito, 580 N.Y.S.2d 843 (N.Y. City Ct. 1992): A mother who ingested cocaine during pregnancy was criminally charged under N.Y. PENAL LAW § 260.10, which makes it a crime to endanger the welfare of a child. The court, however, dismissed the charge, finding that the word "child" in § 260.10 did not include a fetus.

In re Fathima Ashanti, 558 N.Y.S.2d 447 (N.Y. Fam. Ct. 1990): The court considered whether an infant who is born with a positive cocaine toxicology is entitled to be protected under the Family Court Act, and whether a mother's use of drugs during pregnancy can be the basis of a neglect determination. The court interpreted New York's child abuse and neglect statutes to include unborn children, stating that it would "be consistent with medical and scientific advances to treat the fetus while still in the mother's womb." The court held that the birth of a child with a positive toxicology screen for cocaine, with signs of drug withdrawal and low-birth weight, mandates judicial intervention for the protection of the child.

In re Dep't of Social Services, 543 N.Y.S.2d 637 (N.Y. Fam. Ct. 1989): The court considered a neglect petition against a mother who used cocaine during her pregnancy, and subsequently delivered a child addicted to cocaine. The court denied the dismissal of a neglect petition, holding that prenatal drug use, combined with a positive toxicology at birth, if proven, is sufficient to warrant a finding of neglect.

In re Sharon Fletcher, 533 N.Y.S.2d 241 (N.Y. Fam. Ct. 1988): The family court considered whether a mother's prenatal drug use alone can form the basis for a finding of neglect under § 1012(f) (i) (B) of the Family Court Act. The court stated

that "there is no inference to be drawn from the Family Court Act that a mere use, or even occasional uses, of a controlled substance prior to a child's birth puts it in imminent danger of harm." Therefore, additional evidence is required to find neglect.

Statutes

Adoption

N.Y. DOM. REL. LAW § 112(2-a) (McKinney 2001): Adoption agencies are required to provide prospective adoptive parents with information concerning the child's history, including the health and medical history of the parents at the time of the birth of the adoptive child and any drugs or medication taken during the pregnancy by the child's mother.

Education

N.Y. AGRIC. & MKTS LAW § 200(13) (McKinney 2001): Any confectionery containing a defined amount of alcohol must contain the warning: "Notice: This product contains alcohol used as a flavoring and, as with any product that contains alcohol women should not consume alcohol during pregnancy because of the risk of birth defects."

N.Y. ALCO. BEV. CONT. LAW § 105-b (McKinney 2001): Any person who has a license to sell alcoholic beverages for consumption must post warning signs, in conspicuous places, stating, "Government Warning: According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects."

N.Y. PUB. HEALTH LAW § 2522(1)(d) (McKinney 2001): The public health department must distribute information concerning alcohol and drug use to both parents in prenatal assistance programs.

Services

N.Y. PUB. HEALTH LAW § 2541(5) (McKinney 2001): This statute, discussing an early intervention program for infants and toddlers with disabilities, defines disability to include any child with a "diagnosed physical or mental condition that has a high probability of resulting in developmental delay, such as...fetal alcohol syndrome."

Treatment

N.Y. SOC. SERV. LAW § 409-a(10) (McKinney 2001): Any money received from the federal government under section 201 of Federal Public Law 105-89 shall be used to provide "preventive services," which include "substance abuse treatment services provided to pregnant women or a caretaker person in an outpatient, residential or in-patient setting."

N.Y. COMP. CODES R. & REGS. tit. 10, § 85.40(e)(2)(iii) (2001): The Pre-natal Care Assistance Program requires that each pregnant woman has a care plan, and that the care plan must "encourage and assist the pregnant woman in obtaining necessary medical, nutritional, psychosocial, drug and substance abuse services appropriate to her identified needs and provide follow-up to ensure ongoing

access to services.”

N.Y. COMP. CODES R. & REGS. tit. 10, § 405.21(c)(8)(iii) (2001): Under the Department of Health’s minimum standards for hospitals, hospitals must assure the availability of prenatal childbirth education classes for all prebooked women which address the effects of alcohol and other drugs on the fetus.

NORTH CAROLINA

Case Law

State v. Inzar, Nos. 90CRS6960, 90CRS696 1, slip op. (N.C. Super. Ct. Apr. 9, 1991): The state charged a woman, who allegedly used crack during her pregnancy, under a statute that prohibited the delivery of a controlled substance to a person. The court dismissed the charges finding that a fetus is not a person within the meaning of the statutes.

Statutes

Criminal

N.C. GEN. STAT. § 90-95 (e) (5) (2000): It is a Class D felony to sell or deliver a controlled substance to a pregnant woman. A person charged under this statute cannot use the defense that he/she did not know that the woman was pregnant.

Treatment

N.C. ADMIN. CODE tit. 10, r. 14C.1154(a)(b) (2001): The Department of Health and Human Services shall administer a program to provide comprehensive services to substance abusing pregnant women or substance abusing women with dependent children. Services may include primary medical, prenatal and pediatric care immunization, childcare, transportation, gender specific substance abuse treatment, and therapeutic intervention for children that address their developmental needs.

N.C. ADMIN. CODE tit. 10, r. 14C.1156(c)(7) (2001): The Department of Human Resources Division of Mental Health administers a grant program for the federal Substance Abuse Prevention and Treatment Block Grant. To be eligible for the block grant funds, an area program must include substance abuse services for pregnant and parenting women and adolescents.

NORTH DAKOTA

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

N.D. CENT. CODE § 15-11-35 (2000): A fetal alcohol syndrome center is established in the Department of Neuroscience at the University of North Dakota School of Medicine. The state board of higher education shall appoint a person from the department of neuroscience as director of the fetal alcohol syndrome program and that person shall prepare an annual report on the status of fetal alcohol syndrome in North Dakota. The center shall develop prevention activities in groups that are at high risk for fetal alcohol syndrome.

Services

N.D. CENT. CODE § 15-11-36 (2000): The child evaluation and treatment program at the University of North Dakota Medical Center Rehabilitation Hospital shall develop a clinic to provide both initial diagnostic assessment and reevaluation of children with fetal alcohol syndrome. The diagnostic assessment must include a comprehensive multidisciplinary assessment of psychological, speech and language, educational, occupational therapy, physical therapy, optometric, and audiological evaluations. Reevaluations must be individualized according to a child's needs. The center shall provide consultative services to schools, community agencies, and parents to assist in serving children diagnosed with fetal alcohol syndrome.

Ohio

Case Law

In re Baby Boy Blackshear, 736 N.E.2d 462 (Ohio 2000): In a child custody hearing, the Ohio Supreme Court considered whether a newborn who is addicted to cocaine is an abused child under OHIO REV. CODE ANN. § 2151.031. The court held that "when a newborn child's toxicology screen yields a positive result for an illegal drug due to prenatal maternal drug abuse, the newborn is, for purposes of R.C. 2151.031(D), per se an abused child." The court stated that after birth, the newborn is a child, and the discovery of cocaine is from a post-birth, not a prenatal, test.

State v. Gray, 584 N.E.2d 710 (Ohio 1992): The Ohio Supreme Court considered whether a mother could be prosecuted for child endangerment, pursuant to OHIO REV. CODE ANN. § 2919.22(A), for substance abuse occurring before the birth of the child. OHIO REV. CODE ANN. § 2919.22(A) states that "no person, who is the parent. . . of a child under eighteen years of age. . . shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support." The court found that this statute does not create a duty that is breached when a parent uses cocaine prior to the child's birth because a mother does not become a "parent" until after the child is born.

State v. Andrews, No. JU 68459, slip op. (Ohio C.P. June 19, 1989): The court found that a child endangerment statute is not intended to apply to any situation

other than that of a living child placed at risk by actions that occurred after its birth. It stated that “[t]he plain interpretation of the word parent is mother or father of a child who has been born alive.”

Statutes

Identification, Testing, and Reporting

OHIO REV. CODE ANN. § 5111.017 (Anderson 2001): The Department of Job and Family Services shall establish a program for substance abuse assessment and treatment referral for pregnant women who are recipients of medical assistance, and who are required to receive medical services through a managed care organization. Each pregnant woman shall be screened for alcohol and other drug use at her first prenatal medical examination. If it is determined that the recipient may have a substance abuse problem, the medical provider must (a) refer the recipient to an organization certified by the Department of Alcohol and Drug Addiction Services for assessment and (b) inform the recipient of the possible effects of alcohol and other drug use on the fetus.

OHIO REV. CODE ANN. § 3793.15 (Anderson 2001): A program is to be developed by the Department of Alcohol and Drug Addiction Services to determine the number of addicted pregnant women in the state, determine the number of infants born drug-exposed, determine a way to intervene to eliminate addiction during pregnancy, provide for the continued monitoring of addicted pregnant women after the birth of their children, and provide for drug rehabilitation for such children.

OKLAHOMA

Case Law

In re Unborn Child Julie Starks, 18 P.3d 342 (Okla. 2001): After a pregnant woman was arrested for possession and use of methamphetamines, the Oklahoma Department of Human Services took custody of the woman's fetus. The trial court, citing OKLA. STAT. tit. 10, § 7001-1.1, ordered that the fetus remain in the Department's custody. The Supreme Court of Oklahoma vacated the trial court's ruling, and held that “Oklahoma Children's Code does not apply to a fetus, viable or nonviable. The state fails to present any fact or inference from facts to support legislative intent that it so apply.”

State v. Alexander, No. CF-92-2047, Transcript of Decision (Okla. Dist. Ct. Aug. 31, 1992): A woman who had ingested illegal drugs during her pregnancy was charged with unlawful possession of a controlled substance, and the unlawful delivery of that controlled substance to a minor. The Oklahoma District Court dismissed the charges, finding that the presence of drugs in the pregnant woman's system did not constitute possession, and that the transfer of the drug through the umbilical cord to the newborn cannot be considered “volitional.”

Statutes

Adoption

OKLA. STAT. tit. 10, § 7504-1.1(b)(3) (2000): Adoption records must contain information including the consumption of drugs, medications, or alcohol by the biological father or the biological mother at the time of conception and by the biological mother during her pregnancy with the minor.

Child Abuse

OKLA. STAT. tit. 10, § 7001-1.3A.14.c (2000): When used in the Oklahoma's Children's Code, a "deprived child" is a child who at birth tests positive for alcohol or a controlled dangerous substance and who is determined to be at risk for future exposure to such substances.

Education

OKLA. STAT. tit. 10, § 7220B (2000): The Oklahoma legislature finds that an increasing number of children under the age of eighteen years, including many children who would otherwise be at risk of abuse or neglect, are in the care of a grandparent. In response, the Department of Human Services shall establish an informational and educational program including, but not limited to, the area of parental substitute authority, for grandparents who provide primary care for children who are at risk of child abuse, neglect, or abandonment or who were born to substance-abusing mothers. As a part of the program, the Department shall develop, publish, and distribute an informational brochure for grandparents who provide primary care for children who are at risk of child abuse, neglect, or abandonment or who were born to substance-abusing mothers.

Identification, Reporting, and Prevention

OKLA. STAT. tit. 10, § 7003-5.3(H)(2) (2000): When a child, who at birth tested positive for alcohol or a controlled dangerous substance and who was determined to be at risk for future exposure to such substances, has been removed from the home, the Department of Human Services may require that the mother of such child complete a treatment program prior to the return of the child to a safe home.

OKLA. STAT. tit. 10, § 7103(A)(2) (2000): Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who tests positive for alcohol or a controlled dangerous substance shall promptly report the matter to the Department of Human Services.

OKLA. STAT. tit. 63, § 1-546.4 (2000): On or before November 1, 2000, the Department of Mental Health and Substance Abuse Services and the State Department of Health shall jointly complete an epidemiological and demographic study to identify the prevalence in Oklahoma of pregnant women who abuse or are addicted to drugs or alcohol to the extent that the health or safety of the child is at risk, current services and service resources related to substance abuse and women who abuse or are addicted to drugs or alcohol both prenatal and postnatal, and current public expenditures for such services.

OKLA. STAT. tit. 63, § 1-550.3 (2000): The Department of Human Services shall establish and maintain an up-to-date Record of Infants Born Exposed to Alcohol and Other Harmful Substances. Such record shall include data necessary for surveys and scientific research, and other data, which is necessary and proper to further the recognition, prevention and treatment of infants born addicted to, or prenatally exposed to, harmful substances.

Legislative Findings

OKLA. STAT. tit. 63, § 1-546.1 (2000): The state has a substantial interest in protecting children from the harm that results from the abuse of drugs or alcohol by their mothers during pregnancy, both for the sake of the child and because of the potential cost to the state in providing medical and other care to such children. The legislature recognizes that the preferable and most effective means of preventing birth defects and health problems due to substance abuse by pregnant women is to provide readily available and accessible prenatal care and appropriate substance abuse treatment services, but further recognizes that in some instances it may be necessary to use the authority of the state to intervene for the purpose of preserving and protecting the health and well-being of the child.

Task Force

OKLA. STAT. tit. 63, § 1-546.2, 3, & 5 (2000): As part of the Oklahoma Prenatal Addiction Act, the legislature created a Joint Legislative Task Force on Prenatal Addiction and Treatment whose goal is to prepare and report on specific recommendations for the design and implementation of a collaborative program to encourage and assist pregnant women who abuse or are addicted to drugs or alcohol to obtain prenatal and postnatal medical care and substance abuse treatment services. In addition, a district attorney may convene a multidisciplinary team to assist in making a determination of the appropriate disposition of a case of a pregnant woman who is abusing or is addicted to drugs or alcohol to the extent that the unborn child is at risk of harm.

Third-Party Liability

OKLA. STAT. tit. 63, § 2-424 (2000): As part of the Drug Dealer Liability Act, any individual who was exposed to an illegal drug in utero can bring an action for damages caused by use of an illegal drug by an individual against the persons enumerated in the statute.

Treatment

OKLA. STAT. tit. 43A, § 3-417 (2000): Alcohol and other drug abuse treatment centers must have adequate facilities to treat substance abusing pregnant women.

OKLA. STAT. tit. 43A, § 3-602.2 (2000): Women who enter narcotic treatment programs must receive pregnancy tests, at least on an annual basis.

OKLA. STAT. tit. 63, § 1-546.4 (2000): The Department of Mental Health and Substance Abuse Services shall prohibit all substance abuse treatment services from refusing to treat pregnant women if space and staff expertise is available.

OREGON

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Adoption

OR. REV. STAT. § 418.325 (1999): Prior to adoption, children must be tested for the hereditary or congenital effects of parental use of drugs or controlled substances. The information must be available for prospective parents.

Education

OR. REV. STAT. § 106.081 (1999): When the county clerk issues a marriage license, the county clerk shall also give to the licensees a pamphlet describing fetal alcohol syndrome, its causes, and its effects. The Health Division of the Department of Human Services shall provide the pamphlet to the counties.

OR. REV. STAT. § 471.551 (1999): Any person in possession of a valid retail liquor license, who sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign informing the public of the effects of alcohol consumption during pregnancy.

Identification, Testing, and Reporting

OR. REV. STAT. § 430.920 (1999): The attending health care provider must assess pregnant women for drug and alcohol usage. If the results indicate that the patient uses or abuses drugs or alcohol, or uses unlawful controlled substances, the provider must tell the patient about the potential health effects of continued substance abuse and recommend counseling by a trained drug or alcohol abuse counselor. In addition, the provider must supply demographic information to the local public health administrator without revealing the identity of the patient.

OR. REV. STAT. § 430.955 (1999): The Health Division, the Office of Alcohol and Drug Abuse Programs, and the Oregon Health Sciences University shall develop a standardized screening instrument designed to identify the use of substances during pregnancy. In addition, the boards responsible for the licensing of health care providers and appropriate professional organizations may be requested to conduct a series of training sessions for health professionals who provide maternity care on how to assess drug use in pregnancy.

Legislative Findings

OR. REV. STAT. § 430.905 (1999): Because the growing numbers of pregnant substance users and drug- and alcohol-affected infants place a heavy financial burden on Oregon's taxpayers, and those who pay for health care, it is the policy of Oregon to take effective action that will minimize these costs. Special attention must be focused on preventive programs and services directed at women who are at risk of becoming pregnant substance users, as well as on pregnant women who use substances or who are at risk of substance use or abuse. The legislature

recommends using a holistic approach to achieve desired results.

Research

OR. REV. STAT. § 430.910 (1999): The Department of Human Services shall study the problem of substance-using pregnant and postpartum women and their infants. The study shall focus on prevention, education, and treatment located in community, inpatient, outpatient, and residential settings.

Treatment

OR. REV. STAT. § 430.915 (1999): If during routine pregnancy or prenatal care, the attending health care provider determines that the patient uses or abuses drugs or alcohol the provider should encourage and facilitate counseling, drug therapy, and other assistance to the patient in order to avoid having the child, when born, become subject to protective services.

OR. REV. STAT. § 430.925 (1999): Oregon shall develop pilot projects in local health departments that are designed to alleviate the health related problems of pregnant and postpartum women and their infants, which arise from substance use.

OR. REV. STAT. § 430.950 (1999): The Director of Human Services shall appoint a management team to advise the Office of Alcohol and Drug Abuse Programs on the preparation of standards for county grant applications and to advise and assist counties and regions in planning for treatment of pregnant substance abusers. The management team shall work with divisions of the Department of Human Services and with other state agencies to plan for such treatment programs.

PENNSYLVANIA

Case Law

Commonwealth v. Kemp, No. 114-Pitt-1993, slip op. (Pa. Super. Ct. Feb. 22, 1994): The trial court dismissed charges of reckless endangerment and endangering the welfare of a child against a woman who allegedly used cocaine during pregnancy. The trial court found that neither "child" nor "person" includes an unborn fetus. This decision was affirmed by the Pennsylvania Superior Court.

Statutes

Education

PA. STAT. ANN. tit. 71, § 554 (West 2000): The Department of Health will establish programs to train the staff of child protective agencies to identify pregnant women and mothers who are in need of drug or alcohol treatment. They will also establish referral networks between state agencies.

Legislative Findings

PA. STAT. ANN. tit. 11, § 875-103 (West 2000): Under the Early Intervention

Services System Act, a child under the age of three with fetal alcohol syndrome is considered to be handicapped.

Hospital Policies

28 PA. CODE § 137.21(b)(12) (2001): Every hospital must maintain a written set of obstetrical service policies and procedures that includes policies and procedures for the care and treatment of drug-dependent newborns.

28 PA. CODE § 139.12(c)(4) (2001): A hospital's neonatal intensive care unit must care for high-risk infants. A high risk infant is defined to include an infant whose mother is drug addicted or habituated.

Treatment

PA. STAT. ANN. tit. 71, § 553 (West 2000): The Department of Health will offer grants to provide comprehensive services for substance using pregnant women and mothers. The Department of Health will also maintain and report statistics on the number of women referred to treatment, those denied treatment, and those placed on waiting lists. The statute includes a provision, which ensures the confidentiality of records regarding identifiable individuals enrolled in treatment programs.

RHODE ISLAND

Case Law

In re Michael F., 665 A.2d 880 (R.I. 1995): The Department of Children, Youth and Families took temporary custody of an infant five days after birth because he was born addicted to cocaine. After the parents failed to seek appropriate drug rehabilitation services, the Supreme Court of Rhode Island determined that both parents were unfit to care for the child and terminated their parental rights. *See also In re Eric K.*, 756 A.2d 769 (R.I. 2000).

Statutes

Child Abuse

R.I. CODE R. 03-040-420(D)(4) (2000): An expert may be used at a trial to offer evidence and/or support documents revealing a child's medical diagnosis of failure to thrive or fetal alcohol syndrome, or drug withdrawal.

Education

R.I. GEN. LAWS § 15-2-3.1 (2001): With each marriage license, the town or city clerk must provide a pamphlet describing the causes and effects of fetal alcohol syndrome.

Identification and Reporting

R.I. CODE R. 03-040-430 (2000): Babies born with drugs in their systems, as evidenced by a positive toxicology screen at birth or observable withdrawal symptoms, babies born to mothers who admit using drugs during pregnancy or who have been observed ingesting drugs, and babies born with fetal alcohol

syndrome must be reported to the Child Abuse Hotline. When such a call is made, the information alleging drug and/or alcohol abuse is put into the [Child Abuse and Neglect Tracking System] computer as an Early Warning, and an investigation may be initiated.

SOUTH CAROLINA

Case Law

Ferguson v. City of Charleston, 121 S. Ct. 1281 (2001): The U.S. Supreme Court struck down the Medical University of South Carolina's policy of testing the urine of pregnant women for cocaine without consent, and reporting positive results to local authorities. In this case, women were arrested after testing positive for cocaine during their pregnancies, and, in most cases, subsequently not complying with mandated treatment. The Court ruled that the special needs exception to the Fourth Amendment's warrant and probable cause requirements does not apply to a hospital's drug-testing protocol enacted largely for law enforcement, as opposed to medical purposes (the program forced most patients to choose between arrest and treatment).

Whitner v. State, 492 S.E.2d 777 (S.C. 1997): The South Carolina Supreme Court upheld the criminal conviction of a woman who ingested cocaine during pregnancy. In reaching its decision, the court declared that "child" in South Carolina's parental conduct laws, in particular, S.C. CODE ANN. § 20-7-50, includes viable fetuses.

State v. McKnight, Indictment No. 2000 GS26432 (Horry County Ct. May 17, 2001): A woman was convicted of homicide by child abuse and sentenced to twelve years in prison for killing her unborn fetus by smoking crack cocaine during her pregnancy.

Statutes

Child Abuse

S.C. CODE ANN. § 20-7-736 (Law. Co-op. 2000): It is presumed that a newborn child is an abused or neglected child that cannot be protected from further harm without being removed from the custody of the mother upon proof that: (1) a blood or urine test of the child at birth or a blood or urine test of the mother at birth shows the presence of any amount of a controlled substance, or (2) the child has a medical diagnosis of fetal alcohol syndrome.

Public Assistance

S.C. CODE ANN. § 43-5-1190 (Law. Co-op. 2000): A Family Independence (FI) recipient who, while receiving FI benefits, gives birth to a child with evidence of the effects of maternal substance abuse, and the child subsequently is shown to have a confirmed positive toxicology test, is ineligible for FI assistance unless the recipient submits to random drug tests and/or participates in an alcohol or drug treatment program approved by the Department of Alcohol and Other Drug

Abuse Services. Upon completion of the program, if a subsequent random test or subsequent conviction for a controlled substance violation occurs, the recipient is ineligible for FI benefits.

Third-Party Liability

S.C. CODE ANN. § 44-54-40 (Law. Co-op. 2000): Any individual who was exposed to an illegal controlled substance in utero can bring an action for damages against the persons enumerated in section B of this statute.

Treatment

114 S.C. CODE ANN. REGS. 1130(Q) (2001): Participants in the state's Family Independence Program who give birth to a child who tests positive for drugs must participate in an alcohol or drug treatment program approved by the Department of Alcohol and Other Drug Abuse Services.

STATE OF NORTH DAKOTA

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Child Abuse

S.D. CODIFIED LAWS § 26-8A-2(9) (Michie 2000): The term, abused or neglected child, includes a child who was subject to prenatal exposure to abusive use of alcohol or any controlled drug or substance not lawfully prescribed by a practitioner.

Civil Commitment

S.D. CODIFIED LAWS § 34-20A-63 (Michie 2000): A pregnant woman abusing alcohol or drugs may be committed to an approved treatment facility for emergency treatment.

S.D. CODIFIED LAWS § 34-20A-70 (Michie 2000): A pregnant woman who is abusing alcohol or drugs can be committed to any approved treatment facility upon the petition of a spouse, relative, physician, the administrator of a treatment facility, or any other responsible person. In order to commit a pregnant woman, the petition must allege that she is an alcoholic or drug abuser who habitually lacks self-control as to the use of alcoholic beverages or other drugs.

Education

S.D. CODIFIED LAWS § 34-23B-1 (Michie 2000): Any primary health care provider of obstetrical care to a pregnant woman and any counselor who provides services to a pregnant woman shall educate all pregnant patients as to the prenatal effects of drugs and alcohol. The Department of Health and the Department of Human Services will offer educational materials and guidance for the purpose of assuring accurate and appropriate patient education. *See also* S.D. CODIFIED LAWS §

34-23B-2 (Michie 2000) (educating health care professionals for this purpose); S.D. CODIFIED LAWS § 34-23B-5 (Michie 2000) (developing screening materials and criteria for use by primary providers for identification of high- and moderate-risk drug and alcohol use during pregnancy).

S.D. CODIFIED LAWS § 34-23B-3 (Michie 2000): Upon receipt of funds for such programs, the Secretary of Education and Cultural Affairs shall make available to all school districts age-appropriate drug and alcohol education curricula concerning the physiological effects caused by the use of drugs and alcohol on the developing child before and after birth for inclusion in their drug and alcohol education programs in grades one through twelve.

S.D. CODIFIED LAWS § 34-23B-4 (Michie 2000): The Department of Health and the Department of Human Services shall maintain a toll-free information line for the purpose of providing information on resources for substance abuse treatment and for assisting with referral for substance abusing pregnant women.

S.D. CODIFIED LAWS §§ 35-4-99, 100 (Michie 2000): The Department of Human Services shall create a nine by twelve inch sign to be displayed at all licensed alcohol premises that explains the dangers faced by pregnant women who consume alcohol. Failure to display such sign is a petty offense.

Reporting

S.D. CODIFIED LAWS § 26-8A-3 (Michie 2000): All medical professionals and other persons who suspect child abuse or neglect under S.D. CODIFIED LAWS § 26-8A-2 (Michie 2000) are to make a report to appropriate authorities.

Third-Party Liability

S.D. CODIFIED LAWS § 34-20C-4 (Michie 2000): Any person who was exposed to an illegal drug in utero may bring an action for damages caused by another person's use of an illegal drug.

TENNESSEE

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

TENN. CODE ANN. § 57-1-211 (2001): Any licensee that sells alcoholic beverages shall post, in a prominent place easily seen by its customers, a warning sign supplied by the alcoholic beverage commission that drinking alcoholic beverages during pregnancy can cause birth defects, including fetal alcohol syndrome and fetal alcohol effects. Failure to post the sign, as required by this section, shall result in a fine not to exceed \$25.00 for each day the licensee is in violation.

Opinions of the Attorney General

The Attorney General (AG) of Tennessee issued an Opinion on March 27, 1995, that the child abuse statutes in Tennessee could not be legally applied to cases in which a mother used cocaine during pregnancy that resulted in the injury of the child. The AG relied on TENN. CODE ANN. §§ 39-15-401, 402 on child abuse and aggravated child abuse, respectively, which do include the fetus in the definition of child.

Treatment

TENN. CODE ANN. § 66-29-151(b) (2001): Services for low-income pregnant substance abusers may be available through the Health Access Incentive Account program.

TENN. CODE ANN. § 68-1-1403 (2001): Lay women from the community shall be recruited and provided with intensive training to serve as "resource mothers" for pregnant and parenting teens to, among other things, reinforce recommendations of health care providers and give basic health information and advice in areas such as nutrition, avoidance of smoking and alcohol, infant development, and infant care.

TENN. CODE ANN. § 68-24-104(e)(1) (2001): Through grants contracted with community based agencies, the commissioner is authorized to plan, establish, and administer pilot projects to develop effective and efficient prevention and treatment services for low-income, pregnant substance abusers. Each of the pilot projects should, to the extent possible within available funding, provide public information, community outreach, residential beds for rehabilitation, outpatient slots for treatment, family intervention services, specialized support services, enhanced physician oversight, and documentation and recordkeeping.

Texas

Case Law

Chenault v. Huie, 989 S.W.2d 474 (Tex. App. 1999): Huie used illegal narcotics, including cocaine, during her pregnancy, and after the birth, her child was found to have both cocaine and alcohol in her blood. The child subsequently showed signs of developmental problems and was diagnosed as having cerebral palsy attributed to Huie's drug use. The court concluded that Texas does not recognize a cause of action in tort for injuries to a child that result from the mother's negligent or grossly negligent conduct while she was pregnant with the child, and that it should not judicially create a legal duty that would have the effect of dictating a pregnant woman's conduct toward her unborn child.

Collins v. Texas, 890 S.W.2d 893 (Tex. App. 1994): Collins smoked crack cocaine while she was pregnant, thereby causing her child to be born addicted to the drug and suffer withdrawal symptoms. The state indicted Collins for reckless injury to a child. The trial court found her guilty, but the Court of Appeals reversed on grounds that Collins did not have notice that her voluntary ingestion

of cocaine while pregnant could subject her to prosecution after her child was born exhibiting symptoms of cocaine withdrawal because the law was impermissibly vague. Furthermore, the court noted that the Penal Code does not proscribe any conduct with respect to a fetus, and the legislature, by its definitions of "child," "person," and "individual," has specifically limited the application of penal laws to conduct committed against a human being who has been born and is alive at the time the harm is caused.

Statutes

Child Abuse

TEX. FAM. CODE ANN. § 261.001 (Vernon 2000): The use of a controlled substance constitutes child abuse where such use results in physical, mental, or emotional injury to a child. A child is also abused under the statute if he/she was born addicted to alcohol or a controlled substance and who, after birth, experiences observable withdrawal from the alcohol or controlled substance; exhibits observable or harmful effects in the child's physical appearance or functioning; or exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids as the result of the mother's use of the controlled substance or alcohol.

Services to Children

25 TEX. ADMIN. CODE § 32.404 (West 2001): In order to receive Early Childhood Intervention case management services, the recipient must be eligible for Medicaid and have a developmental disability, which includes fetal alcohol syndrome or fetal alcohol effects.

Termination of Parental Rights

TEX. FAM. CODE ANN. § 161.001 (Vernon 2000): The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has used a controlled substance in a manner that endangered the health or safety of the child or if the parent has been the cause of the child being born addicted to alcohol or a controlled substance

Treatment

40 TEX. ADMIN. CODE § 144.522 (West 2001): Drug and alcohol treatment programs must establish screening procedures to identify members of priority populations, including pregnant injecting drug users and pregnant substance abusers, and admit them before all others.

40 TEX. ADMIN. CODE § 144.525 (West 2001): If a treatment program does not have an appropriate provider for the applicant, the provider shall arrange for treatment (through admission or referral) in a program with the most appropriate level of care accessible to the applicant. If the applicant is placed on a waiting list, the provider may admit the client to a less intensive program on an interim basis.

40 TEX. ADMIN. CODE § 148.114 (West 2001): All programs that admit females of child-bearing age shall have at least one staff person with documented knowledge of pregnant substance-abusing females and their care. When a

pregnant female is admitted, all members of the treatment team shall receive information needed to provide appropriate care.

UTAH

Case Law

State ex rel. M.E.C., 942 P.2d 955 (1997): M.E.C. was born premature and tested positive for cocaine. The Division of Child and Family Services (DCFS) immediately placed M.E.C. in protective custody and petitioned for custody of the baby based on neglect. The juvenile court granted DCFS's petition, and the mother subsequently relinquished her rights to M.E.C.

Statutes

Reporting

UTAH CODE ANN. § 62A-4a-404 (2000): When any person attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome or fetal drug dependency, he shall report that determination to the Division of Child and Family Services as soon as possible.

UTAH CODE ANN. § 62A-4a-411 (2000): Any person, official, or institution required to report a case of fetal alcohol syndrome or fetal drug dependency who willfully fails to do so is guilty of a class B misdemeanor.

State Custody

UTAH CODE ANN. § 62A-4a-409 (2000): The state Division of Family Services shall make a thorough pre-removal investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect the existence of the alleged harm. A division worker or child protection team member may take a child into protective custody, and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from its original environment.

UTAH CODE ANN. § 62A-4a-412 (2000): A report of fetal alcohol syndrome or fetal drug dependency as defined by law is confidential and may only be made available to (1) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect; (2) a physician who reasonably believes that a child may be the subject of abuse or neglect; (3) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report; or (4) an office of the public prosecutor or its deputies.

VERMONT

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes*Adoption*

VT. STAT. ANN. tit. 15A, § 2-105 (2001): Prospective adoptive parents are to be provided with information about the background of an adoptive child, including an account of the minor's prenatal care, medical condition at birth, and any drug or medication taken by the minor's mother during pregnancy.

VIRGINIA

Case Law

Commonwealth v. Smith, CR-91-05-4381, slip op. (Va. Cir. Ct. Sept. 16, 1991): The court dismissed child abuse charges, under VA. CODE ANN. § 18.2-371.1, against a woman who allegedly used drugs during pregnancy. The court found that the child abuse statute is not intended to apply to fetuses or prenatal conduct.

Commonwealth v. Wilcox, No. A-44116-01, slip op. (Va. Dist. Ct. Oct. 9, 1991): The court dismissed child abuse charges against a woman who allegedly used cocaine during her pregnancy. The court found that the application of the relevant statute would extend the statute beyond the creative construction intended by the legislature.

Statutes*Child Abuse*

VA. CODE ANN. § 16.1-241.3 (Michie 2000): A preliminary protective order or emergency removal order may be made alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child, based on perinatal drug addiction or fetal alcohol syndrome.

VA. CODE ANN. § 63.1-248.3(A1) (Michie 2000): Among the reasons to suspect that a child is abused or neglected are: (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by the physician; (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease, or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a

controlled substance, which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol.

Testing

VA. CODE ANN. § 54.1-2403.1 (Michie 2000): Physicians providing care to pregnant women must screen their patients for substance abuse. Physicians are required to provide warnings and information about poor birth outcomes to women who test positive. These results are not admissible in any criminal proceeding.

Third-Party Liability

VA. CODE ANN. § 38.2-5001 (Michie 2000): Disability or death of a newborn resulting from maternal substance abuse does not fall with the statutory definition of "birth-related neurological injury."

Treatment

12 VA. ADMIN. CODE § 30-50-510.B.5 (West 2000): The Department of Medical Assistance Services has established expanded prenatal care services that include residential substance abuse treatment services for pregnant and postpartum women. The program is a comprehensive, intensive residential treatment program to improve pregnancy outcomes by eliminating the substance abuse problem.

VA. CODE ANN. § 2.1-51.15:1 (Michie 2000): In order to respond to the needs of substance abusing women and their children, the Secretary of Health and Human Resources shall develop criteria for (i) enhancing access to publicly funded substance abuse treatment programs in order to effectively serve pregnant substance abusers; (ii) determining when a drug-exposed child may be referred to the early intervention services and tracking system available through Part H of the Individuals with Disabilities Education Act, 20 U.S.C. § 1471; (iii) determining the appropriate circumstances for contact between hospital discharge planners and local departments of social services for referrals for family oriented prevention services, when such services are available and provided by the local social services agency; and (iv) determining when the parent of a drug-exposed infant, who may be endangering a child's health by failing to follow a discharge plan, may be referred to the child protective services unit of a local department of social services.

VA. CODE ANN. § 32.1-127 (B)(6) (Michie 2000): Upon identification of a postpartum substance-abusing woman, a licensed hospital must notify the local community services board, which will implement and manage a discharge plan for the woman and her newborn.

VA. CODE ANN. § 37.1-182.1 (Michie 2000): The Board of Mental Health, Mental Retardation and Substance Abuse Services shall promulgate regulations that ensure that programs licensed to provide substance abuse treatment develop policies and procedures, which provide for timely and appropriate treatment for pregnant substance abusing women.

WASHINGTON

Case Law

State v. Dunn, 916 P.2d 952 (Wash. Ct. App. 1996): Both Dunn and her newborn child tested positive for cocaine at the child's birth. The state charged Dunn with second degree criminal mistreatment of her viable unborn child, relying on WASH. REV. CODE § 9A.42.030(1)(a). The Court of Appeals unanimously upheld the trial court's decision to dismiss the second-degree criminal mistreatment charges for cocaine consumption during pregnancy because the state failed to establish that Dunn's unborn child was a "child" for the purposes of the criminal mistreatment statute.

Statutes*Education*

WASH. REV. CODE § 66.16.110 (2001): Each state liquor store must post, in a conspicuous place, notices not less than one inch high, warning people that consumption of alcohol shortly before conception or during pregnancy may cause birth defects, including fetal alcohol syndrome and fetal alcohol effects.

Identification and Testing

WASH. REV. CODE § 70.83E.020 (2001): The Department of Health shall develop screening criteria for use in identifying pregnant or lactating women addicted to drugs or alcohol who are at risk of producing a drug-affected baby. The Department shall also develop training protocols for medical professionals related to the identification and screening of women at risk of producing a drug-affected baby.

WASH. REV. CODE § 70.96A.500 (2001): The Department of Health shall contract with the University of Washington fetal alcohol syndrome clinic to provide fetal alcohol exposure screening and assessment services. The services shall include training health care staff in community-based fetal alcohol exposure clinics to accurately diagnosis individuals with fetal alcohol exposure, development of written or visual educational materials for individuals diagnosed with fetal alcohol exposure, establishment of diagnostic clinics statewide if funds allow, and preparation of an annual report detailing information relating to diagnostic accuracy and reliability.

Legislative Findings

WASH. REV. CODE § 70.83C.005 (2001): The state recognizes that the use of alcohol and other drugs during pregnancy can cause medical, psychological, and social problems for women and infants. The state further recognizes that the best way to prevent problems for chemically dependent pregnant women and their resulting children is to engage the women in alcohol or drug treatment. The legislature further recognizes that pretreatment services should be provided at locations where chemically dependent women are likely to be found, including public health clinics and domestic violence or homeless shelters. Therefore the

legislature intends to prevent the detrimental effects of alcohol or other drug use to women and their resulting infants by promoting the establishment of local programs to help facilitate a woman's entry into alcohol or other drug treatment.

Research

WASH. REV. CODE § 13.34.805 (2001): To the extent funds are appropriated, the state shall measure the reduction in the birth rate of drug-affected infants among women and shall compare the reduction with the rate of birth of drug-affected infants born to women referred to chemical dependency treatment programs. The study shall identify the factors that promote or discourage the ability of women to avoid giving birth to drug-affected infants.

WASH. REV. CODE § 70.83E.030 (2001): The Department of Health shall investigate the feasibility of medical protocols for laboratory testing or other screening of newborn infants for exposure to alcohol or drugs. The Department of Health shall consider how to improve the current system with respect to testing, considering such variables as whether such testing is available, its cost, which entity is currently responsible for ordering testing, and whether testing should be mandatory or targeted.

Services

WASH. REV. CODE § 13.34.803 (2001): The Departments of Health shall develop a comprehensive plan for providing services to mothers who (a) have delivered a drug or alcohol exposed or affected infant, and (b) who meet the definition of at-risk eligible persons under the law. In developing the plan, the Department shall inventory the community-based programs that may be accessed to provide services to these mothers and their children; evaluate implementing services for these mothers through extension of the maternity care access system; and evaluate the fiscal impact of the plan. In performing the fiscal evaluation, the Department shall calculate potential long-term cost savings to the state resulting from reduced use of the medical, juvenile justice, public assistance, and dependency systems by children and mothers receiving services under the plan.

WASH. REV. CODE § 70.96A.510 (2001): The Department of Social and Health Services, the Department of Health, the Department of Corrections, and the Office of the Superintendent of Public Instruction shall execute an interagency agreement to ensure the coordination of identification, prevention, and intervention programs for children who have fetal alcohol exposure, and for women who are at high risk of having children with fetal alcohol exposure.

Treatment

WASH. REV. CODE § 13.34.800 (2001): A model project is to be developed to provide services to women who give birth to infants exposed to the nonprescription use of controlled substances or abuse of alcohol by the mother during pregnancy.

WASH. REV. CODE § 70.83C.020 (2001): The Secretary of the Department of Health shall develop three pilot demonstration projects, two in public health clinics and one in conjunction with a domestic violence program. Specially trained counselors at each site are to identify substance-abusing women before, during,

and after pregnancy; educate women and agency staff on the effects of alcohol and drugs on health, pregnancy, and unborn children; ascertain a woman's need for treatment; facilitate her entry into treatment; and advocate on a woman's behalf with social service agencies or other entities to ensure and coordinate treatment.

WASH. REV. CODE § 74.09.790 (2001): Under the Maternity Care Access Program, pregnant women who are substance abusers may receive support services, defined to include public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, family planning services, and child care. Support services may also include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose.

WISCONSIN

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Education

W. VA. CODE § 60-6-25 (2000): All establishments licensed to sell alcohol, either for consumption on or off the premises, shall display signs provided by the alcohol beverage control commissioner warning of the possible danger of birth defects that may result from the consumption of alcohol during pregnancy. Failure to comply with this rule may result in a fine of not less than one hundred dollars nor more than one thousand dollars per violation. The proceeds of fines collected for violations of this section shall be deposited in a fund known as the "fetal alcohol syndrome fund," which will be used to educate the public concerning the dangers of fetal alcohol syndrome.

WISCONSIN

Case Law

Wisconsin ex rel. Angela M.W. v. Kruzicki, 561 N.W.2d 729 (Wis. 1997): The County Department of Health and Human Services sought a protective custody order in juvenile court over the viable fetus (and hence the pregnant woman) when an obstetrician reported the possibility of child abuse by Angela M.W., who repeatedly tested positive for cocaine during pregnancy. The juvenile court granted the custody order, and a divided court of appeals determined that the juvenile court did not exceed its jurisdiction. The Wisconsin Supreme Court

reversed, finding that the statute allowing the state to take protective custody of a "child" does not include the fetus.

State v. Deborah J.Z., 596 N.W.2d 490 (Wis. Ct. App. 1999): At the time J.Z. delivered her child, she had a blood alcohol concentration of 0.30%. Her child was born with a blood alcohol level of 0.199%. The state charged J.Z. with attempted first-degree homicide and first-degree reckless injury. The court of appeals dismissed the charges, finding that an unborn child is not a "human being" as defined by Wisconsin law.

Statutes

Child Abuse

WIS. STAT. § 48.02(am) (2000): Child abuse, when used in referring to an unborn child, includes serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree.

Civil Commitment

WIS. STAT. § 48.133 (2000): The juvenile court has exclusive original jurisdiction over an unborn child alleged to be in need of protection or services. When an expectant mother habitually lacks self-control in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, and there is a substantial risk that the physical health of the unborn child will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control, the court also has exclusive original jurisdiction over the expectant mother described in this section. Other parts of this section deal with procedures for taking the pregnant woman into state custody. WIS. STAT. §§ 48.193, 48.19(1)(cm), 48.205(1m), 48.205(1)(d), 48.213(1)(b), and 48.21(1)(b) (2000).

Education

WIS. STAT. § 46.03(34) (2000): The Department of Health and Family Services shall acquire, without cost if possible, pamphlets that describe the causes and effects of fetal alcohol syndrome and the dangers to a fetus of the mother's use of cocaine or other drugs during pregnancy. These pamphlets shall be distributed free of charge to each county clerk in sufficient quantities so that each county clerk may provide pamphlets to marriage license applicants under WIS. STAT. § 765.12(1) (2000).

WIS. STAT. § 765.12(1) (2000): With each marriage license the county clerk shall provide a pamphlet describing the causes and effects of fetal alcohol syndrome.

Funding

WIS. STAT. § 46.86(1) (2000): The Department of Health and Family Services may award not more than \$125,500 each fiscal year in grants to counties and

private nonprofit entities for treatment of pregnant women and mothers with alcohol and other drug abuse treatment needs. The grants shall be used to establish community-based programs, residential family-centered treatment programs, or home-based treatment programs. The program under a grant must include alcohol and other drug abuse treatment services, parent education, support services for the children of the women who are enrolled in the program, vocational assistance, and housing assistance.

WIS. STAT. § 46.86 (3m) (2000): The Department of Health and Family Services may not distribute more than \$900,000 in each fiscal year to fund a multidisciplinary prevention and treatment team in Milwaukee County for cocaine-abusing women and their children.

Legislative Findings

WIS. STAT. § 48.01(am) (2000): Wisconsin recognizes that unborn children have certain basic needs that must be provided for, including the need to be free from physical harm due to the habitual lack of self-control of their expectant mothers in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree.

Testing and Reporting

WIS. STAT. § 146.0255(2) (2000): A hospital employee who provides health care, a social worker, or an intake worker, may refer an infant or an expectant mother of an unborn child to a physician for testing of bodily fluids for controlled substances if the professional suspects controlled substances are in bodily fluids. If the results of the test indicate that the infant or expectant mother has controlled substances or controlled substance analogs in their bodily fluids, a physician shall make a report. Under this subsection, a physician may not test an expectant mother without first receiving her informed consent.

Treatment

WIS. STAT. § 48.01(am) (2000): When an expectant mother of an unborn child suffers from a habitual lack of self-control in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, in order to ensure that the needs of the unborn child, the court may determine that it is in the best interest of the unborn child for the expectant mother to be ordered to receive treatment, including inpatient treatment, for that habitual lack of self-control.

WIS. STAT. § 51.42(3)(4m) (2000): A county department of community programs must, within the limits of available funds, provide for the program needs of persons suffering from alcoholism or drug abuse. If state, federal, and county funding for alcohol and other drug abuse treatment services are insufficient to meet the needs of all eligible individuals, first priority for services is given to pregnant women who suffer from alcoholism or alcohol abuse, or who are drug dependent.

WIS. STAT. § 51.46 (2000): For inpatient or outpatient treatment for alcohol or other drug abuse, the first priority for services that are available in privately operated facilities, whether on a voluntary or involuntary basis, is for pregnant

women who suffer from alcoholism, alcohol abuse, or drug dependency.

WYOMING

Case Law

No court cases strictly dealing with the regulation of drug and alcohol use by pregnant women were found.

Statutes

Adoption

WYO. STAT. ANN. § 1-22-116 (Michie 2000): Prospective adoptive parents shall be provided with the medical history of the child subject to adoption, and this history shall include, but not be limited to any drugs or medication taken during pregnancy by the child's natural mother and any other information that may be a factor influencing the child's present or future health.

Education

WYO. STAT. ANN. § 35-27-102 (Michie 2000): Under the Public Health Nursing Infant Home Visitation Subprogram, pregnant women with a substance abuse problem are eligible for prenatal contacts, home visitation services, and information about medical care for infants.